

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

**Petition:** 52-021-07-1-1-00001  
**Petitioner:** Patricia Maiben  
**Respondent:** Miami County Assessor  
**Parcel:** 52-11-22-100-002.002-021  
**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Miami County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated September 18, 2008.
2. The PTABOA issued notice of its decision on October 24, 2008.
3. The Petitioner filed a Form 131 petition with the Board on November 25, 2008. She elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing dated July 7, 2009.
5. Administrative Law Judge Dalene McMillen held the Board's administrative hearing on August 27, 2009. She did not inspect the property.
6. The following persons were present and sworn as witnesses at the hearing:
  - a. For Petitioner—Patricia Maiben, Owner,  
Radene S. Ward,  
Stanley Smith,  
Kay Smith,  
David Betzner,  
Linda J. Balsbaugh,  
Kevin E. Balsbaugh,
  - b. For Respondent—County Assessor Nancy Hardwick-Gates,  
Deputy Assessor Sara McAuliffe.

## **Facts**

7. The property is a single-family residence with a barn and utility shed on 21.95 acres located at 889 East 500 South near Peru.
8. The PTABOA determined the assessed value is \$27,000 for land and \$139,300 for improvements (total assessed value of \$166,300).
9. The Petitioner requested an assessed value of \$9,000 for land and \$46,433 for improvements (total assessed value of \$55,433).

## **Record**

10. The official record contains the following:
  - a. The Form 131 petition and related attachments.
  - b. The digital recording of the hearing.
  - c. Petitioner Exhibit 1 – Home Sold Report–Real Estate Trends Indicator,  
Petitioner Exhibit 2 – Form 130 Petition,  
Petitioner Exhibit 3 – Form 115 Notification,  
Petitioner Exhibit 4 – Form 131 Petition,  
Petitioner Exhibit 5 – Diary of correspondence between the Petitioner and the owner of the hog farm operation,  
Petitioner Exhibit 6 – Article entitled “Neighbors sue hog farm over odors,”  
  
Respondent Exhibit 1 – Summary of Indiana Department of Environmental Management (IDEM) research,  
Respondent Exhibit 1A – Incomplete copy of a letter from Southwind Pork, LLC to County Commissioner dated December 8, 2006,  
Respondent Exhibit 1B – IDEM’s list of persons who got notice about the Concentrated Animal Feeding Operation Program,  
Respondent Exhibit 1C – Letter from Jerome Rud dated December 21, 2006, regarding public notice about a CAFO, farm ID# 6511,  
Respondent Exhibit 1D – Publisher’s Affidavit from Peru Tribune,  
Respondent Exhibit 1E – IDEM’s internet Document Search page,  
Respondent Exhibit 1F – Search results page for CFO/CAFO #6511,  
Respondent Exhibit 2 – Summary response to newspaper article,  
Respondent Exhibit 2A – Page from the study discussed in newspaper article,  
Respondent Exhibit 2B-C – Article entitled “Land value research debunks myths of livestock farms,”

Respondent Exhibit 3 – Summary of assessed value and sales price analysis for properties in the Petitioner’s neighborhood,

Respondent Exhibit 4 – Property record cards for the following properties:

- parcel no. 52-11-13-400-032.000-021,
- parcel no. 52-11-23-100-007.000-021,
- parcel no. 52-11-10-100-002.000-021,
- parcel no. 52-11-15-200-011.000-021,
- parcel no. 52-11-22-100-002.002-021,  
(the last parcel is the subject property),

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

### **Contentions**

11. Summary of Petitioner’s case:

- a. The odor from a neighboring 4,000 head hog confinement operation adversely affects the value and marketability of the subject property. *Petitioner Exhibits 4, 6; Maiben testimony.*
- b. The odor from the hog operation limits outdoor activities. It has harmed people’s lifestyles and their health. It causes burning eyes and lungs. The neighbors suffer economically because they are unable to open their windows. Consequently they must run air conditioners. This problem will affect the ability to sell the subject and other neighboring properties. *Maiben, Betzner, S Smith, Ward and K Balsbaugh testimony.*
- c. The Petitioner purchased her property in January 2003. The hog farm didn’t move into the area until October 2007. The Petitioner and all of the neighbors owned their properties before the hog operation moved into the area. They could not anticipate the negative effect it would have on property values. *Maiben testimony.*
- d. The Petitioner attempted to contact the owner of the hog operation several times to suggest possible solutions to the odor problem, but nothing got resolved. *Petitioner Exhibit 5; Maiben testimony.* In an attempt to find a solution, the Petitioner contacted IDEM to inquire about laws or regulation on hog farm operations. IDEM indicated Miami County would have jurisdiction over these types of matters. According to the Miami County Zoning Department and Health

Department, however, there are no regulations or ordinances controlling hog farm odors in Miami County. *Maiben testimony.*

- e. The Petitioner submitted two articles entitled “Neighbors sue hog farm over odors” and “Land value research debunks myths of livestock farms.” *Petitioner Exhibits 4, 6.* One article shows that a neighborhood in southwest Missouri experienced a decline in their health, quality of life and a reduction in property values as a result of the odor from a similar hog operation. The other article states “every 100 market-mature hogs—at 250 pounds—on regulated livestock operations within one mile of a non-town residence reduced sale price by \$550...” *Petitioner Exhibit 4.* The negative affects of such operations on property values are not exclusive to Miami County. *Maiben testimony.*
  - f. Miami County is the second poorest county in Indiana. *Maiben testimony.* A report from the internet entitled “Homes Sold Report—Real Estate Trends Indicator” (home report) shows the average selling prices of homes from 2004 through 2009. *Petitioner Exhibit 1.* In several of those periods, Miami County experienced a decline in the average selling prices of homes. For example in 2007, 96 houses sold and the average price was \$103,742. In 2008, 85 houses sold and the average price was \$71,799. Due to economic conditions in Miami County the housing market has continued to decline over the last few years. *Maiben testimony.*
12. Summary of Respondent’s case:
- a. The property under appeal is correctly assessed at \$166,300. The 2005 and 2006 sales and assessment information from the sales ratio study for properties located in the area of the Petitioner’s property supports this valuation. The property under appeal is assessed at less than the average per square foot for the area. The average price per square foot for a home located in the Petitioner’s neighborhood is \$88.61 per square foot, while the Petitioner’s property is assessed at \$83.40 per square foot. *McAuliffe testimony; Respondent Exhibits 3, 4.*
  - b. The Petitioner did not present any probative evidence that the assessment is incorrect. The testimony about the negative affects to their health, lifestyle and property values caused by the neighboring hog operation is irrelevant to the 2007 assessment because the neighbor’s hog operation was not up and running until November 1, 2007. As of the assessment date the Petitioner would not have known what affect the hog operation would have on her property value. *Respondent Exhibits 1, 1A-1F; McAuliffe testimony.*
  - c. The Petitioner purchased her property for \$275,000 on August 23, 2004. The 2007 assessment is only \$166,300 and has addressed the decline in property values. *Respondent Exhibit 4; McAuliffe testimony.*

## Analysis

13. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
14. In making its case, the taxpayer must explain how each piece of evidence is relevant to the 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”).
15. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
16. A Petitioner cannot rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment according to the Guidelines. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from past practice: “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”).
17. For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject 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).

18. The Petitioner failed to make a prima facie case for any assessment change based on the odor from the neighboring hog operation.
- a. The undisputed evidence in this case establishes that there is a terrible odor from a large hog confinement operation located near the subject property. The Petitioner and several of her neighbors testified about not being able to do things outside—or even open their windows—because the smell is so bad. It causes some people to suffer burning eyes and lungs. People must run air conditioners. There was considerable testimony from several neighbors about how the odor has a negative impact on lifestyles and health. The owner of the hog operation either will not or cannot resolve the problem. The Petitioner unsuccessfully tried to get IDEM to help resolve the problem. She also unsuccessfully tried to get the Miami County Zoning Department and the Health Department to help resolve the problem, but they have not done so. None of these facts were disputed by the Respondent.<sup>1</sup> In this case the Board accepts them as true; however, they fail to go to the heart of this matter.
  - b. The most relevant issue is establishing a more accurate value: Considering the nearby hog operation and in particular the odor from it, what is the market value-in-use of the subject property? The Petitioner and some of her neighbors testified in general terms that this situation would have a negative effect on their property values. The Respondent offered the article “Land value research debunks myths of livestock farms” in an apparent attempt to rebut that conclusion, but it does not. The Petitioner correctly noted that the article recognizes hog operations reduce sale prices for residences located within one mile. *Respondent Exhibit 2-B*. After weighing all the evidence, the Board concludes that the market value-in-use of the subject property is less with the presence of the hog operation than the value would be if the hog operation were not there.
  - c. Nevertheless, to make a case for any assessment change, the Petitioner must prove what a more accurate value for the subject property would be. There are various ways to prove what that value might be. An appraisal would be one way to do so. *MANUAL* at 5. But the Petitioner failed to present any such evidence. Consequently, even though the hog operation probably reduces the value of the subject property somewhat, the Petitioner failed to make a case because there is no probative evidence that proves a more accurate value.

---

<sup>1</sup> The Respondent did point out that the hog operation was not up and running until November 1, 2007. The Petitioner did not dispute this fact. According to the Respondent, the timing means that none of the problems associated with the hog operation are relevant to the 2007 assessment. While there is some merit to the Respondent’s position, it is also possible that property values reacted in anticipation of the hog operation and its odor problem. Neither side presented substantial evidence or argument on that timing point, but ultimately it makes no difference to the outcome of this case.

19. The Petitioner also failed to make a prima facie case for any assessment change based on economic conditions in Miami County and a general decline in the selling prices of homes.
- a. Sales information regarding comparable properties is another kind of evidence that can be used to prove what a more accurate valuation might be. MANUAL at 5.
  - b. A valid comparison depends on specific, relevant facts regarding each property. To use a comparison approach effectively, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of comparability. *Long*, 821 N.E.2d at 470. The proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purported comparable. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* at 471. In this case the Petitioner did not present such a comparative analysis. The Petitioner presented a report showing the average selling prices of homes from 2004 through 2009. Comparing the value of the subject property with average selling price for other homes does not prove what a more accurate assessed valuation might be.
  - c. On a very conclusory basis, that average selling price report has some relevance and probative value in showing economic conditions in Miami County. It might have been a step in the right direction, but not enough to make a prima facie case. The Petitioner provided no meaningful analysis for the declining trend.<sup>2</sup> Even if the conclusion that a home would sell for less than what it would have sold for a few years earlier is accurate, that point by itself has little, if any, relevance to determining a more accurate valuation because the Petitioner failed to prove what a “correct” adjustment would be to arrive at a valuation as of January 1, 2006. Furthermore, the Petitioner paid \$275,000 when she bought the property and the current assessment is only \$166,300. Clearly, the current assessment recognized some decrease in value. To prove that the assessment should be lower would require much more than what the Petitioner presented here.
20. When the Petitioner fails to make a prima facie case for any assessment change, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus., v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind.

---

<sup>2</sup> The Petitioner apparently offered this report to show that the same house would sell for less in 2009 than in 2004, but it does not necessarily support that conclusion. Although the report breaks the sales information into certain categories (based on number of bedrooms and general style types), it consists of aggregate data and its meaning is unclear. For example, the report may simply indicate that homes at lower price points continue to sell and those at higher price points do not. The Petitioner failed to walk through every step of analysis for how this report might support her proposed valuation. See *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Tax Ct. 2003). Consequently, it is not necessary to discuss the shortcomings of the Respondent's case.

### Conclusion

21. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

### Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
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>.