

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

**Petition:** 47-007-06-1-5-00002  
**Petitioner:** Danny T. Miller  
**Respondent:** Lawrence County Assessor  
**Parcel:** 47-04-13-200-052.000-07  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated June 25, 2007.
2. The PTABOA issued notice of its decision on November 15, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on December 11, 2007, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 30, 2009.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on October 6, 2009. She did not inspect the property.
6. The following persons were present and sworn as witnesses:  
For the Petitioner – Danny T. Miller,  
For the Respondent – Kirk Reller,  
Delores Watterson,  
County Assessor April Collins.

**Facts**

7. The property is a single family residence located at 235 Meadowbrook Drive in Springville.
8. The PTABOA determined the assessed value is \$24,700 for land and \$199,200 for improvements (total \$223,900).
9. On his Form 131 Petition, the Petitioner requested \$19,315 for land and \$177,900 for improvements (total \$197,215).

## Contentions

### 10. Summary of the Petitioner's case:

- a. The subject property suffers from several negative influences. A commercial quarry borders the subject property. It expanded after the Petitioner bought this land and had his house built. The weekly blasting in the quarry has resulted in damage to the foundation and interior walls as well as environmental issues from the dust. The subject property is affected by a legal drain catching the run off from the quarry. There is an asphalt company bordering the subject property. A 50 foot gas pipeline easement runs the entire length of the subject property making a 50 foot by 400 foot strip of land unusable. Rather than a positive 15% influence factor, the subject property should have a negative 15% influence factor to account for these negative influences. *Miller testimony.*
- b. The Residential Appraisal Report prepared by Gilford Murdoh, an Indiana Certified General Appraiser, estimated the value of the subject property at \$185,000 as of June 7, 2004. This appraisal was before construction on the house started. The appraisal does not mention or address the problems caused by the quarry because it was performed before the quarry expanded. *Miller testimony; Pet'r Ex. A.*
- c. The "turn key" price of the home was \$148,053. All the construction work was performed by the contractor. If the land value is based on purchase price, then the value of the home should be based on the same thing—its purchase price. *Miller testimony; Pet'r Ex. B.*
- d. The 2006 assessment should be approximately \$190,000. *Miller testimony.*

### 11. Summary of the Respondent's case:

- a. The 15% increase applied to the subject property's value was not an influence factor. It was the annual trending factor applied to all properties in the area. *Reller testimony.*
- b. The appraisal was performed as of June 7, 2004, prior to the construction of the home. The appraiser's final reconciliation states that "final value is subject to revision pending the inspection of completed construction." It notes that the appraisal is subject to completion per plans and specifications. The appraisal has several deficiencies. It does not reflect the subject property's value as of January 1, 2005. The comparables used in the appraisal are not good comparables. The subject property is a 2-story brick home, but the comparables it used are 1-story vinyl homes. The appraisal does not include the pole barn, which was built before the house was built. The appraisal incorrectly indicates that the subject property has electric forced heat and central air conditioning, but it actually has a geothermal system. *Reller testimony; Resp't Ex. 1, 2, 3, 4, 5.*

- c. The quarry might be something to consider, but the appraisal concluded that the subject property does not suffer from any external obsolescence. *Reller testimony.*
- d. An analysis of several comparable properties in the area shows that the assessed value per square foot and the sale price per square foot are close. The assessment of the subject property falls within that range. *Reller testimony; Resp't Ex. 18.*

**Record**

12. The official record for this matter is made up of the following:
- a. Petition for Review of Assessment (Form 131) with attachments,
  - b. Notice of Hearing,
  - c. Hearing Sign-In Sheet,
  - d. Digital recording of the hearing,
  - e. Petitioner Exhibit A – Residential Appraisal Report for the subject property,  
 Petitioner Exhibit B – Page 3 of the agreement reflecting the total price for construction the Petitioner’s house,  
 Respondent Exhibit 1 – Page 2 of 2 from the Residential Appraisal Report,  
 Respondent Exhibit 2 – Property record card (PRC) and photograph for the appraisal’s Comparable 1,  
 Respondent Exhibit 3 – PRC and photograph for the appraisal’s Comparable 2,  
 Respondent Exhibit 4 – PRC and photograph for the appraisal’s Comparable 3,  
 Respondent Exhibit 5 – PRC for the subject property,  
 Respondent Exhibit 6 – Photographs of the subject property,  
 Respondent Exhibit 7 – PRC, photograph, and sales disclosure form for 143 Tulip Lane,  
 Respondent Exhibit 8 – PRC and sales disclosure form for Parcel 283 Tulip Lane,  
 Respondent Exhibit 9 – PRC, photograph, and sales disclosure form for 301 Hillcrest Court,  
 Respondent Exhibit 10 – PRC, photograph, and sales disclosure form for 80 Miller Drive,  
 Respondent Exhibit 11 – PRC, photograph and sales disclosure form for 265 Springville Judah Road,  
 Respondent Exhibit 12 – PRC, photograph, and sales disclosure form for 198 Maple Run Estates Court,  
 Respondent Exhibit 13 – PRC, photograph, and sales disclosure form for 459 Maple Run Estates Boulevard,  
 Respondent Exhibit 14 – PRC, photograph, and sales disclosure form for 139 Maple Run Estates Boulevard,

Respondent Exhibit 15 – PRC, photograph, and sales disclosure form for 178 Maple Run Court,  
Respondent Exhibit 16 – Plat map,  
Respondent Exhibit 17 – Aerial photograph showing the subject property and Armstrong property,  
Respondent Exhibit 18 – Comparison of assessed values per square foot to sale prices per square foot for properties in the Maple Run area,  
Respondent Exhibit 19 – PRC, photograph, and sales disclosure form for 75 Miller Drive,  
Respondent Exhibit 20 – PRC, photograph, and sales disclosure form for 837 Spyglass Hill Drive,  
Respondent Exhibit 21 – PRC and photograph for 835 Spyglass Hill Drive,  
Respondent Exhibit 22 – PRC and photograph for the subject property,

f. These Findings and Conclusions.

### Analysis

13. The most applicable governing cases are:
- a. 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).
  - b. In making its case, a party 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”).
  - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. 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.

15. The Petitioner failed to make a case for a change in the assessment. This conclusion was arrived at because:
  - a. Undisputed testimony established that the subject property suffers from a number of things that are probably negative influences on the value of the subject property, such as the damage caused by the blasting from a nearby quarry or the gas pipeline easement that makes part of the land unusable. Merely establishing the existence of such negative influences, however, is not sufficient to prove what a more accurate assessment valuation might be. To make such a case, the Petitioner would have had to quantify the influence factors with market data. *See Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1106 (Ind. Tax Ct. 1999). The Petitioner failed to present such market data to support his claim for a negative influence factor.<sup>1</sup> The Petitioner's conclusory statements that a negative 15% influence factor would have been appropriate to account for the various things about which he complained are not probative evidence. *See Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements are not probative evidence).
  - b. Rather than focusing on issues related to the assessment methodology in the Guidelines (such as what an appropriate negative influence factor might be), in order to make a case one should focus on what the market value-in-use of the property actually is. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006). An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice, is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).

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<sup>1</sup> Although the Petitioner presented an appraisal, he failed to explain how any of the purported negative influences connect with its analysis. The appraisal does not mention the quarry, the asphalt company, the drain or the easement as being conditions that reduce the value of the subject property. In fact, the appraisal appears to be at least somewhat in conflict with the claim about negative influences. It states, "This area is considered to have average market appeal." The Petitioner testified that the problem caused by the quarry blasting arose after the appraisal was completed and after the house was built, which may explain why that problem was not recognized or measured in the appraisal. But the Petitioner failed to offer any explanation for the appraisal not addressing the other purported negative influences on his property. Under these circumstances, the appraisal does not help to quantify any of the purported negative influences identified by the Petitioner.

- c. In this case, the Petitioner submitted a “Uniform Residential Appraisal Report” prepared by Gilbert Mordoh, who appears to be an Indiana Certified General Appraiser. After considering the cost approach and the comparable sales approach, his report concludes that the market value of the subject property was \$185,000 as of June 7, 2004, but this value “is subject to revision pending an inspection of the completed construction.”
- d. Undisputed evidence established that the appraisal was prepared before construction on the house began in late 2004. This fact does not necessarily mean that such an appraisal cannot be a reliable indication of value, but under such circumstances the probative value of the appraisal depends on the fact that the actual construction matches what the appraiser anticipated when doing the appraisal. Mr. Mordoh recognized this point and specifically stated that his conclusion was subject to revision after inspecting the completed construction.
- e. The Petitioner introduced almost nothing to prove how the actual construction of his home might compare to what Mr. Mordoh thought he was appraising. Furthermore, the Respondent pointed out that the appraisal failed to recognize the geothermal system of the subject property as well as the pole barn (measuring 40 feet by 60 feet) that had been built earlier—points that the Petitioner did not dispute. Under such circumstances, the appraisal does not help to prove the current assessment is wrong or what a more accurate valuation of the subject property might be.
- f. As noted above, actual construction costs can also be used to rebut the presumption the assessment is correct. The Petitioner offered evidence that his total actual cost to construct this house was \$148,053.<sup>2</sup> This evidence consisted of his testimony and one page of a document that specifies percentage payments during the course of construction. Despite the Petitioner’s statement that this page (Petitioner Exhibit B) is the contract for construction of the house, it clearly is not the entire contract and many essential provisions are lacking to show exactly what it covers. The lack of completeness has serious impact on the credibility and probative value of his evidence. Nevertheless, even if that price is exactly what the Petitioner claims it to be, there is no evidence about the cost of the land or the cost of preparing the site for development. It is not clear whether the cost of the geothermal system is included in that amount or not. Furthermore, there is no evidence about the cost of the pole barn. Therefore, the Petitioner also failed to prove that the assessment should be changed based on actual construction costs.

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<sup>2</sup> For a 2006 assessment, the valuation date was January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. This home construction apparently took place during late 2004 and into early 2005, and consequently it corresponds closely with the required valuation date of January 1, 2005.

**Conclusion**

- 16. The evidence does not prove that the current assessment is wrong and it does not prove what a more accurate valuation of the subject property might be.

**Final Determination**

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

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

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Commissioner, 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, 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>>