

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00800  
**Petitioner:** Roy W. Miller  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-26-36-0481-0004  
**Assessment Year:** 2002

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

### Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held on December 4, 2003, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$129,500, and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 27, 2004.
3. The Board issued a notice of hearing to the parties on October 4, 2004.
4. A hearing was held on November 9, 2004, in Crown Point, Indiana before Special Master Peter Salvesson.

### Facts

5. The subject property is located at 6931 Wicker Avenue, Hammond, North Township, Lake County.
6. The subject property is a single family-home on 0.167 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
  - a) Assessed Value of the subject property as determined by the DLGF:  
Land \$16,400                      Improvements \$113,100                      Total \$129,500
  - b) Assessed Value requested verbally by the Petitioner during hearing:  
Land \$15,210                      Improvements \$104,890                      Total \$120,100

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
9. Persons sworn in at hearing:

For Petitioner: Holly E. Miller, Daughter of Owner  
Mary Susan Miller, Daughter of Owner

For Respondent: John Toumey, DLGF

### **Issue**

10. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) A letter dated October 27, 2003 from James Fritza, a realtor for Coldwell Banker Residential Brokerage, states that the value of the subject property is \$130,000. *M. Miller testimony, Pet'r Ex. 2, 5.*
  - b) The Petitioner's family was told by a realtor that prices of homes in the subject's neighborhood have risen 2% per year. *M. Miller testimony; Pet'r Ex. 2.* Thus, the correct 1999 value should be \$120,100. *M. Miller argument; Pet'r Ex. 2.*
  - c) Three nearby houses on the same block as the subject are assessed lower than the subject. *M. Miller testimony; Pet'r Ex. 2.* A home owned by Chester and Julie Bennett at 6919 Wicker is comparable to the subject. *Id.* It has fewer square feet, is on two lots instead of one, is made of brick instead of cinder block, and has a 2-car attached garage instead of a 1 ½ -car detached garage. *Id.* It has a dining room, three bedrooms, and 1 ½ baths like the subject. *Id.* It does not have an addition of a family room like the subject. *Id.* The assessed value of this comparable home is \$112,500. *Id.*
  - d) Recently, Purdue Calumet has begun construction of a parking garage across the street from the subject property. This negatively impacts the value of the subject property. *Id.*
11. Summary of Respondent's contentions in support of assessment:
  - a) The market analysis presented by the Petitioner was prepared by a realtor and not a licensed appraiser, and is therefore not probative. *Toumey argument.* The letter does not contain any back-up documentation in support of the analysis. *Id.*
  - b) The Petitioner did not present documentation showing how the proximity of the parking lot and proposed parking garage affected the value of the subject property as of the assessment date. *Id.*
  - c) No comparable sales were found in the subject's area. *Toumey testimony.* Thus, the subject property was assessed using the cost approach, with a neighborhood factor of

1.00. *Id.*; *Resp't Ex. 2.* The characteristics of the subject property are properly reflected on the Property Record Card. *Id.*

### **Record**

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

- a) The Petition and all subsequent pre-hearing submissions by either party.
- b) The tape recording of the hearing labeled Lake Co 586.
- c) Exhibits:

Petitioner's Exhibit 1:	Form 139L Petition
Petitioner's Exhibit 2:	Summary of Petitioner's Arguments
Petitioner's Exhibit 3:	Notice of Final Assessment
Petitioner's Exhibit 4:	Form 11
Petitioner's Exhibit 5:	Fair Market Value Assessment by Realtor

Respondent's Exhibit 1:	Form 139L Petition
Respondent's Exhibit 2:	Subject Property Record Card
Respondent's Exhibit 3:	Subject Property Photographs

Board Exhibit A:	Form 139L Petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

- d) 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 at 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, 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”).
- a) 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. The Petitioner did not provide sufficient testimony to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The Petitioner contends that the assessment is too high, based on an October 27, 2003, opinion of value from a realtor.
  - b) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real estate 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). The Manual further provides that for the 2002 general reassessment, a property's assessment must reflect its market value-in-use as of January 1, 1999. MANUAL at 4.
  - c) As the Respondent correctly argues, the opinion of value submitted by the Petitioner was not completed by a licensed appraiser, and lacks any documentation to allow the Board to evaluate the opinion, the methods used to compute the value of the subject, the comparable properties used, or the adjustments made to the comparable properties. For this reason alone, the opinion of value has very little probative value.
  - d) Furthermore, the opinion of value is dated October 27, 2003, while the assessment valuation date is January 1, 1999. A party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).
  - e) The Petitioner offered a conclusory statement that property values have risen 2% in the subject's neighborhood. However, the Petitioner offered no documentary evidence from the market to support this statement. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).
  - f) Finally, the Petitioner contends that the construction of a parking garage by a nearby university has negatively affected property values. Again, however, the Petitioner relies on a conclusory statement, and lacks supporting evidence from the market.
  - g) For the reasons set forth, the Petitioner has failed to make a prima facie case of error in the assessment. Therefore, there is no change warranted.

## Conclusion

15. 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 Indiana Board of Tax Review now determines that the assessment should not be changed.

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

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.