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

Petition No.: **43-028-09-1-5-00035**
Petitioner: **Linda L. Miller Trust**
Respondent: **Kosciusko County Assessor**
Parcel No.: **43-04-14-200-483.000-025**
Assessment Year: **2009**

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

Procedural History

1. Linda Miller, trustee of the Linda L. Miller Trust, filed a Form 130 petition challenging the subject property's March 1, 2009 assessment. On August 23, 2010, the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Ms. Miller the relief she had requested.

2. Ms. Miller then timely filed a Form 131 petition with the Board. She elected to have the appeal heard under the Board's small claims procedures and the Assessor did not object.

3. On January 24, 2012, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus ("ALJ").

4. The following people were sworn in and testified:

    a) For Ms. Miller: Stephen R. Snyder, counsel for Ms. Miller

    b) For the Assessor: Laurie Renier, Kosciusko County Assessor
    Jack C. Birch, Counsel for the Assessor
    John Beer, appraiser

Facts

5. The subject property contains a single-family lakefront home located at 8767 East Crow Road, in Syracuse, Indiana.

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

7. The PTABOA determined the following values for the subject property:
Land: $996,500 Improvements: $32,000 Total: $1,028,500

8. Ms. Miller requested the following values:
Land: $688,000 Improvements: $32,000 Total: $720,000

Summary of Parties' Contentions

9. Ms. Miller's evidence and contentions:

a) Certain unique factors significantly reduce the subject property's value. Specifically, the property fronts Lake Wawasee to the west, with a channel to the south and an adjacent platted, public road to the north. For at least the past 40 years, other property owners in the neighborhood have claimed the road to the north as a public beach. Consequently, there is significant foot and vehicular traffic on that road going all the way to the water's edge, at all times of day. Also, a large pier extends from the end of the road into the water, and the many gatherings and parties that take place interfere with the subject property's normal use. *Snyder testimony; see also, Pet'r Ex. 8.*

b) Additionally, setback restrictions limit building a new home on the subject property in ways that do not apply to typical lakefront lots. Kosciusko County zoning regulations require a 35-foot setback from the water's edge, so the subject property has two such setbacks—one for the lake and one for the channel. The county also requires a 25-foot sideline setback from a public right-of-way. In this case, the public right-of way is a heavily used road. *Snyder testimony; Pet'r Ex. 11.*

c) While Ms. Miller could apply for variances from these restrictions, the Kosciusko County Board of Appeals is generally reluctant to grant them. As a result, the zoning restrictions significantly reduce the subject property's usable space. If the current improvements were ever destroyed and not reconstructed in identical form, these setback requirements would apply within six months. And if the property were sold, the chance that a buyer would retain a $32,000 home with only 655 square feet is remote. For the property to realize value, a new home would have to be built on it within the existing setback requirements. *Snyder testimony; see also, Pet'r Ex. 11.*

d) A property located directly across the channel, owned by C.P. Morgan, is comparable to the subject property. That property, which consists of three lots, was assessed at $675,700. And the C.P. Morgan property does not have as many setback issues as the subject property—there are two water setbacks, but there is no roadway setback. *Snyder testimony; Pet'r Exs. 9-10.*

e) Ms. Miller's claims are further supported by a professional appraiser's opinion. Robert L. Kramer, a certified appraiser, estimated the subject property's value at $720,000 as of January 9, 2009. Mr. Kramer certified that

he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Snyder testimony; Pet'r Ex. 3*.

f) Mr. Kramer arrived at his valuation opinion using the sales-comparison approach. For that analysis, he used three other lakefront properties from Lake Wawasee, all of which sold between January 10, 2008 and August 25, 2008. Mr. Kramer compared each property to the subject property along multiple lines, and he adjusted each property's sale price to account for various ways in which it differed from the subject property. Most significantly, the subject property has 100 feet of lake frontage, while the comparable properties have 30 feet, 50 feet, and 50 feet, respectively. Mr. Kramer adjusted the first property's sale price upward by $70,000 and the other two properties sale prices by $50,000 to account for the difference in lake frontage. Although Mr. Kramer apparently considered adjusting the sale prices for time-related market differences between the properties' respective sale dates and his appraisal's valuation date, he did not make any such adjustments. The adjusted sale prices for Mr. Kramer's three comparable properties ranged from $645,000 to $776,300. *Pet'r Ex. 3*.

g) Finally, while the Assessor relied on what her witness described as a comparable sale on East Blackpoint Road, Mr. Snyder represented the buyer in that transaction, and there were unique circumstances that were not disclosed on the sales disclosure form. Because of zoning issues, the parties negotiated an agreement whereby the seller demolished the existing house so that the buyer could build a new one. *Snyder testimony.*

10. The Assessor's evidence and contentions:

a) Ms. Miller bought the subject property for $710,000 in September 2003. *Snyder testimony on cross-examination; Resp't Ex. 3.* The same zoning restrictions were in place at that time. Thus, the current assessment reflects that 2003 sale price plus appreciation that occurred over the next six years. *Birch testimony*.

b) In addition, a comparable property sale not only supports the current assessment, but also shows that Mr. Kramer did not adequately adjust the sale prices of the comparable properties that he relied on in his appraisal. Specifically, a property located at 8595 East Blackpoint Road sold for roughly $11,000 per front foot. *Birch testimony; see also, Resp't Exs. 4, 7.* And Mr. Beer, who is a licensed appraiser, testified that overall lot values of $11,000 to $13,000 are not uncommon on Lake Wawasee. *Beer testimony*; *see also, Resp't Ex. 6*.

c) Despite those high front-foot values, Mr. Kramer adjusted his comparable properties' sale prices by only $1,000 per front foot. Mr. Beer felt that Mr. Kramer's adjustments were extremely low. Mr. Beer acknowledged that the per foot value of lakefront lots decreases for the portions of the lots that exceed the dimensions of a basic, buildable lot. Nonetheless, given overall lot

values around the lake, Mr. Beer testified that a more appropriate adjustment would have been between $5,000 and $7,500 per front foot. Mr. Beer testified that using his suggested adjustments would have added several hundred thousand dollars to the indicated value for each sale. *Beer testimony*.

d) The Assessor also offered two documents that Mr. Beer had prepared: a July 29, 2010 "Review of the Appraisal Report on 8767 E. Crow Road," and a January 18, 2012 letter to Mr. Birch. In the appraisal review, Mr. Beer again indicated that he thought Mr. Kramer's site adjustment was too low and that a proper adjustment of $5,000 to $7,500 would be more appropriate. But Mr. Beer also indicated that the subject property's effective frontage was less than the 100 feet of actual frontage that Mr. Kramer used in his appraisal, and indicated that he believed that the subject land might have been over-assessed. Mr. Beer recognized that, while having both lake and channel frontage has some benefit, it also restricts what can be done with the lot. Mr. Beer concluded that the property's dimensions should be corrected, that it should be placed into a neighborhood with a deeper standard depth, and that a negative influence factor should be considered to account for the property's setbacks along the channel. *Resp't Ex. 6*; *see also Beer testimony* (recognizing that while having both channel and lake frontage is a benefit, the multiple setbacks resulting from the dual frontage also have a negative effect).

e) In his January 18, letter, Mr. Beer again addressed the subject property's correct dimensions and explained that, while it would not be unreasonable to use an adjustment below $13,000 per front foot, the $1,000 rate that Mr. Kramer used was too low. Mr. Beer pointed out that reducing the size of adjustments helps get an appraisal through under-writing because underwriters prefer not to have gross adjustments above 20%. Mr. Beer further explained that, if site adjustments of $5,000 per front foot[1] were used, the indicated values for Mr. Kramer's comparable sales would be $780,000, $821,300, and $861,300, respectively. Mr. Beer concluded that the subject land was over-assessed but under-appraised. *Resp't Ex. 6*.

f) To quantify annual appreciation of lakefront properties, Mr. Beer has kept a running chart of sales on Lake Wawasee since 2000. That chart shows a 22% increase in median sale prices between 2000 and 2001 and a more gradual increase from 2003 through 2008. *Beer testimony; Pet'r Ex. 7.*

g) Turning to Ms. Miller's other evidence, the Assessor argued that the C.P. Morgan property is not a valid comparator. *Birch argument.* The C.P. Morgan property is somewhat triangularly shaped, and it does not front the lake normally. Thus, while it may have 70 feet of actual lake frontage, its effective frontage is only 46 feet. *Birch, Beer testimony.* And while C.P.

[1] Mr. Beer's letter actually refers to an adjustment of "$500" per front foot. *Resp't Ex. 6*. But given the values that Mr. Beer came up with, it appears that the reference to $500 was a typographical error and that he meant $5,000.

Morgan bought three lots for $750,000, Ms. Miller pointed only to the assessments for two of those lots in making her comparison. *Birch testimony.*

h) Finally, Mr. Snyder's testimony that the board of zoning appeals would be unlikely to grant Ms. Miller any variances is mere speculation. There is a procedure for owners of unique lots like the subject property to petition for relief, but Ms. Miller has not attempted to do so. *Birch testimony and argument.*

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

a) The Form 131 petition,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	Form 131 petition,
Petitioner Exhibit 2:	Form 130 petition,
Petitioner Exhibit 3:	Certified appraisal, dated January 9, 2009,
Petitioner Exhibit 4:	Crowdale Property Owners' Private Beach Negatives,
Petitioner Exhibit 5:	Copy of photograph of private beach sign,
Petitioner Exhibit 6:	Form 115,
Petitioner Exhibit 7:	Subject property record card,
Petitioner Exhibit 8:	Beacon aerial photograph with information about the subject property,
Petitioner Exhibit 9:	Beacon aerial photograph with information about adjacent property,
Petitioner Exhibit 10:	Property record card for 11465 North Cedar Point Low Road,
Petitioner Exhibit 11:	Page 18 of Kosciusko County Zoning Ordinance.

Respondent Exhibit 1:	Beacon Geographic Information System ("GIS") map of the subject's neighborhood, with recent sale information overlaid,
Respondent Exhibit 2:	Subject property record card,
Respondent Exhibit 3:	Sales Disclosure Form for 8767 Crow Road,
Respondent Exhibit 4:	Sales Disclosure Form for 8595 East Blackpoint Road,
Respondent Exhibit 5:	Sales Disclosure Form for 11465 North Cedar Point Low Road,
Respondent Exhibit 6:	January 18, 2012 letter from John Beer to Jack Birch and January 29, 2010 Review of the Appraisal Report on 8767 Crow Road
Respondent Exhibit 7:	Lake Wawasee Sales, Average Values on Yearly Basis, and Trendlines and Appreciation/Depreciation Rates

Respondent Exhibit 9: Qualifications for John P. Beer.[2]

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Notice of appearance for Jack C. Birch,
Board Exhibit D: December 16, 2011 letter from Stephen R. Snyder to Linda Miller[3],
Board Exhibit E: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

Attorney testimony

12. Before reaching the merits, a troubling aspect of the hearing calls for some discussion—counsel for each party chose to act simultaneously as an advocate and witness. That potentially raises a concern under Rule 3.7 of the Indiana Rules of Professional Conduct, which provides, in relevant part:

> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
> (1) The testimony relates to an uncontested issue;
> (2) The testimony relates to the nature and value of legal services rendered in the case; or
> (3) Disqualification of the lawyer would work substantial hardship on the client.
> (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Ind. Prof. Cond. R. 3.7.

13. Because Rule 3.7 refers to a "trial"—which is more commonly associated with proceedings in court than with administrative proceedings—there is at least some question as to whether the rule applies to proceedings before the Board. The comments to the rule, however, repeatedly refer to the "tribunal" rather than to the "court" or "judge." Ind. Prof. Cond. R. 3.7 comments 1-5. And the Rules of Professional Conduct elsewhere indicate that "tribunal denotes a court, an arbitrator, *or any other neutral body or neutral individual* making a decision based on evidence presented and the law applicable to that evidence, which decision is binding on the parties involved." Prof. Cond. R. 1.0(m) (emphasis added). That definition appears to include the Board and its administrative law judges.

[2]The Assessor did not submit an Exhibit 8.
[3] This document is actually Mr. Snyder's engagement letter, signed by both Mr. Snyder and Ms. Miller. It appears that he intended the letter to serve as his notice of appearance.

14. Nonetheless, neither side objected to the other side's attorney testifying. And, as discussed below, the Board ultimately does not rely significantly on either attorney's testimony in reaching its decision. The Board therefore need not decide whether Rule 3.7 applies directly to Board proceedings or, if so, whether Messrs. Snyder and Birch violated that rule. The Board, however, cautions counsel against acting as both a witness and advocate in hearings before the Board unless an exception to Rule 3.7 applies.

Merits

15. Ms. Miller proved that the subject property's assessment should be reduced. The Board reached this decision for the following reasons:

A. Burden of proof

a) 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). 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"). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach 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.

b) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

c) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor,* 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to USPAP often will

suffice. *See id.; Kooshtard Property VI,* 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

d) Regardless of the method used to rebut an assessment's presumption of accuracy, 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). Otherwise, the evidence lacks probative value. *See id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing on 2002 assessment values without some explanation as to how those values relate to the January 1, 1999 value."). For March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(2009).

B. Ms. Miller made a prima facie case for reducing the subject property's assessment.

e) Mr. Snyder, Ms. Miller's representative, offered a variety of evidence and arguments in an attempt to show that the subject property was assessed too high. Much of that evidence, however, lacks probative value. For example, while Mr. Snyder pointed to factors that he felt detracted from the subject property's value, he did not attempt to quantify their effect or otherwise explain how those factors led to a particular value or range of values.

f) Similarly, Mr. Snyder did nothing to explain how the C.P. Morgan property's $675,700 assessment relates to the subject property's market value-in-use. At best, the fact that the Morgan property is assessed lower than the subject may speak to a lack of uniformity and equality in the assessments. But even then, Mr. Snyder did little to compare the Morgan property to the subject property other than point to similarities in location and setback requirements.

g) Nonetheless, Ms. Miller offered Robert L. Kramer's appraisal report, in which Mr. Kramer estimated the subject property's value at $720,000. Mr. Kramer certified that he performed his appraisal in conformity with USPAP, and he used a generally accepted appraisal approach—the sales-comparison approach—to arrive at his valuation opinion.

h) Importantly, Mr. Kramer estimated the property's value as of January 9, 2009, a little more than a year after the relevant January 1, 2008 valuation date. Mr. Kramer, however, relied solely on sales from 2008. That is enough to show at least some relationship between his valuation opinion and the subject property's value as of January 1, 2008. Granted, that relationship is not precise. But the Department of Local Government Finance's rules for annual adjustments that were in effect at the times relevant to this appeal instructed assessors to use sales from 2007 and 2008 in performing ratio studies for the March 1, 2009 assessment date. 50 IAC 21-3-3(a)(2009) ("For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall

use sales of properties occurring the two (2) calendar years preceding the relevant assessment date.").

i) The Assessor also offered evidence of her own that serves to relate Mr. Kramer's valuation opinion to the appropriate valuation date. Specifically, the Assessor offered Mr. Beer's annual trending data for Lake Wawasee properties. According to Mr. Beer, median sale prices on Lake Wawasee decreased by 4.30% from January 1, 2008 to January 1, 2009, the latter of which is just eight days before the valuation date that Mr. Kramer used in his appraisal. Using Mr. Beer's data, the subject property's market value-in-use on January 1, 2008 would have been $752,351.09.[4]

j) Mr. Beer, however, did little to explain his trending data. Without more information, it is not clear that simply comparing median sale prices from year to year measures changes in the market with any degree of precision. Nonetheless, based on the record as a whole, Ms. Miller made a prima facie case that the subject property's true tax value was no more than $752,400[5]—Mr. Kramer's appraisal estimate trended to a January 1, 2008 value using Mr. Beer's year-to-year sales data.

C. The Assessor did not sufficiently impeach or rebut Mr. Kramer's trended valuation opinion.

k) The burden therefore shifted to the Assessor to impeach or rebut Mr. Kramer's trended valuation opinion. To that end, Mr. Beer argued that Mr. Kramer compared the subject property to smaller properties without adequately adjusting the smaller properties' sale prices to account for that size difference. Mr. Beer's criticism has at least some facial appeal. Mr. Kramer's site adjustment, which he appears to have calculated as simply $1,000 per front foot, is significantly less than the per-unit values for which some other lakefront lots sold. Of course, Mr. Beer acknowledged that the per-unit value of lake frontage diminishes when a lot exceeds the dimensions required for building a home. He also admitted that the subject property's dual setback restrictions likely hurt its value. And while Mr. Beer testified that an adjustment between $5,000 and $7,500 per front foot would have been more appropriate, he did not explain how he arrived at those numbers. Thus, despite having some questions about Mr. Kramer's site adjustment, the Board still finds his appraisal to be sufficiently reliable.

l) The Assessor, however, did not simply try to impeach Mr. Kramer's appraisal; she also offered her own independent valuation evidence. Thus her attorney, Mr. Birch, pointed to the $1,050,000 sale of a purportedly comparable property at 8595 East Blackpoint Road. But Mr. Birch did little to compare that property to the subject property other than compare the width

[4] The Board gets that value through the following calculation: $720,000 ÷ .957 = $752,351.09.
[5] Assessed values are rounded to the nearest $100. *See* 2002 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 130 (incorporated by reference at 50 IAC 2.3-1-2)(2009).

of the respective lots. The East Blackpoint Road property's sale price therefore lacks probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (explaining that the taxpayers needed to compare their property's characteristics to those of their purportedly comparable properties and explain how any differences affected the properties' relative market values-in-use).

m) Mr. Birch also tried to support the subject property's assessment by pointing to what Ms. Miller bought the property for in 2003. According to Mr. Birch, when trended forward to 2009, that sale price approximates the property's $1,028,500 assessment. But as the following table shows, that argument flies in the face of Mr. Beer's trending data:

Year	**Change**
2003-04[6]	2.43%
2004-05	4.54%
2005-06	2.17%
2006-07	0.02%
2007-08	-2.09%

See Resp't Ex. 7.[7] Thus, if anything, using Mr. Beer's data to trend Ms. Miller's purchase price forward actually supports Ms. Miller's claims.

Conclusion

16. Ms. Miller made a prima facie case for reducing the subject property's assessment and the Assessor failed to significantly impeach or rebut Ms. Miller's evidence. The Board therefore finds for Ms. Miller and orders the Assessor to reduce the subject property's March 1, 2009 assessment to $752,400.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's March 1, 2009 assessment be changed to $752,400.

[6] For 2003, the beginning value represents Ms. Miller's September 2003 purchase price. Since Ms. Miller owned the property for only the last third of 2003, the 2.43% appreciation rate is one-third of Mr. Beer's total 2003 rate of 7.28%.

[7] These are the numbers when Mr. Beer used sales from 2000 through 2011 in calculating a trend line. When he used only sales from 2005 through 2011, the yearly increases and decreases were different. *See Resp't Ex. 7; see also Beer testimony*.

ISSUED: **April 3, 2012**

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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>.