

REPRESENTATIVE FOR PETITIONER:
Phillip Hartman, *Pro se*

REPRESENTATIVE FOR RESPONDENT:
Marilyn Meighen, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Shirley Hartman)	Petition Nos.: 47-007-12-1-5-00005
)	
)	
)	
Petitioner,)	
)	Parcel Nos.: 47-04-13-200-038.000-007
)	
v.)	
)	
)	
Lawrence County Assessor,)	County: Lawrence
)	Township: Perry
)	
Respondent.)	Assessment Year: 2012

Appeal from the Final Determination of the
Marshall County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Shirley Hartman
47-007-12-1-5-00005
Findings & Conclusions
Page 1 of 22

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Petitioner appeals the 2012 assessment on a residential property. The Respondent presents evidence supporting the assessment. The Petitioner fails to rebut that evidence.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The property consists of a residence and outbuildings on four acres located at 245 Meadowbrook Drive, Springville.
3. The Petitioner initiated the 2012 assessment appeals with the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) on January 4, 2013.
4. On August 1, 2013, the PTABOA issued its assessment determination. It determined the assessed value to be \$22,800 for the land and \$69,600 for the improvements (totaling \$92,400).
5. On August 8, 2013, the Petitioner filed a Form 131 Petition for Review of Assessment seeking the Board's review of the 2012 assessment.
6. The Board set the matter for hearing on February 26, 2015, with Administrative Law Judge Andrew Howell designated as the hearing officer. The property owner, Shirley Hartman was not present. The owner's husband, Phillip Hartman was present. ALJ Howell continued the hearing as Mr. Hartman had not established a right to appear on behalf of Mrs. Hartman.

7. The Board re-set the matter for April 17, 2015 and designated Commissioner Jonathan Elrod as the hearing officer. The hearing was conducted on the record. The Board did not conduct a physical inspection.

8. Phillip Hartman, Danny Miller, Kirk Reller, and Wayne Johnson were sworn in and testified under oath. Marilyn Meighen and Jeffrey Collins appeared as counsel on behalf of the Assessor. Shirley Hartman appeared telephonically.¹

9. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Limited Power of Attorney
 - Petitioner Exhibit 1A – Property Record Card (PRC) for property on Jude Road
 - Petitioner Exhibit 1/2/3 – Letter from property owners²
 - Petitioner Exhibit 4 – Letter from Amy Powell
 - Petitioner Exhibit 5 – Letter from Clayton Mitchell
 - Petitioner Exhibit 6 – Letter from Chris Richardson
 - Petitioner Exhibit 7 – Letter from Indiana Department of Environmental Management
 - Petitioner Exhibit 8 – Photographs of subject property
 - Petitioner Exhibit 8A – Photographs of subject property
 - Petitioner Exhibit 9 – Photographs of subject property³
 - Petitioner Exhibit 10 – Photographs of a car
 - Petitioner Exhibit 11 – Photographs of a car
 - Petitioner Exhibit 12 – Summary of Clean Air Act⁴
 - Petitioner Exhibit 13 – Photocopy of I.C. 13-30-2-1
 - Petitioner Exhibit 14 – Photocopy of I.C. 13-11-2-3
 - Petitioner Exhibit 15 – Photocopy of I.C. 13-11-2-1.5
 - Petitioner Exhibit 16 – Photograph of subject property
 - Petitioner Exhibit 17 – PRC for 8909 State Rd. 58 E.
 - Petitioner Exhibit 18 – PRC for 918 Old Farm Rd.
 - Petitioner Exhibit 19 – PRC for 918 Old Farm Rd.
 - Petitioner Exhibit 20 – Realtor Listing for 918 Old Farm Rd.
 - Petitioner Exhibit 21 – Survey
 - Petitioner Exhibit 22 – Plat

¹ Another person was present for a portion of the hearing and declined to identify himself on the sign-in sheet. During the proceedings, Mr. Hartman referred to him as Mr. Shaw.

² The Petitioner labeled each page of the same document as a separate exhibit; it will be referred to as Ex. 1/2/3.

³ Petitioner labeled the back side of Ex. 8 as Ex. 9 and also labeled a separate document as Ex. 9. The Board considers both sides of Ex. 8 as encompassing Ex. 8. The backside of Ex. 9 is labeled Ex. 12. The Board considers both sides of Ex. 9 as encompassing Ex. 9.

⁴ As indicated in note 3, the Board disregards the backside of Ex. 9 labeled as Ex. 12 and refers to the Summary of Clean Air Act, also labeled Ex. 12, as Ex. 12.

Petitioner Exhibit 23 – PRC for 40 Meadowbrook Dr.
Petitioner Exhibit 24 – PRC for subject property
Petitioner Exhibit 25 – PRC for subject property
Petitioner Exhibit 26 – PRC for subject property
Petitioner Exhibit 27 – PRC for 112 Morningside Dr.
Petitioner Exhibit 28 – PRC for property on Spencer Pike Rd.
Petitioner Exhibit 29 – Bid from National Barn Company
Petitioner Exhibit 30 – Bid from National Barn Company
Petitioner Exhibit 31 – Bid from Graber Post Buildings
Petitioner Exhibit 32 – Bid from Graber Post Buildings
Petitioner Exhibit 33 – Bid from Daviess County Metal Sales
Petitioner Exhibit 34 – Bid from Daviess County Metal Sales
Petitioner Exhibit 35 – Advertisement for Grade Guard
Petitioner Exhibit 36 – Advertisement for Graber Post Buildings
Petitioner Exhibit 37 – Photocopies of assorted contractor advertisements
Petitioner Exhibit 38 – Real Property Maintenance Report for 2164 Spencer Pike
Petitioner Exhibit 39 – PRC for 2164 Spencer Pike
Petitioner Exhibit 40 – PRC for 1775 Hayes Rd.
Petitioner Exhibit 41 – PRC for 1775 Hayes Rd.
Petitioner Exhibit 42 – PRC for 301 Morningside Dr.
Petitioner Exhibit 43 – PRC for property on Morningside Dr.
Petitioner Exhibit 44 – PRC for 130 Morningside Dr.
Petitioner Exhibit 45 – PRC for 42 Morningside Dr.
Petitioner Exhibit 46 – PRC for 187 Morningside Dr.
Petitioner Exhibit 47 – PRC for 235 Meadowbrook Dr.
Petitioner Exhibit 48 – PRC for 243 Meadowbrook Dr.
Petitioner Exhibit 49 – PRC for 275 Meadowbrook Dr.
Petitioner Exhibit 50 – PRC for 75 Meadowbrook Dr.
Petitioner Exhibit 51 – PRC for 39 Morningside Dr.
Petitioner Exhibit 52 – PRC for 2571 Springville Judah Rd.
Petitioner Exhibit 53 – PRC for 242 Meadowbrook Dr.
Petitioner Exhibit 54 – PRC for 250 Meadowbrook Dr.
Petitioner Exhibit 55 – PRC for property on Rockwood Dr.
Petitioner Exhibit 56 – Bid from TK
Petitioner Exhibit 57 – PRC for 714 Leatherwood Rd.
Petitioner Exhibit 58 – PRC for 1117 14th St.
Petitioner Exhibit 59 – PRC for 2721 Morgan Rd.
Petitioner Exhibit 60A – PRC for 63 Glory Ln.
Petitioner Exhibit 60B – PRC for 63 Glory Ln.
Petitioner Exhibit 60C – PRC for 63 Glory Ln.
Petitioner Exhibit 61 – Contract with Graber Post Buildings

10. The Respondent presented the following exhibits:⁵
 - Respondent Exhibit B – PRC for subject property
 - Respondent Exhibit C – Appraisal Report
11. The Board also recognizes as part of the record of proceedings the Form 131 Petition, Notices of Hearing Board, hearing sign-in sheet, the digital recordings of the hearings, and all motions and responses filed with the Board prior to the hearing.

PRELIMINARY MATTERS

12. This matter was originally noticed for a hearing on February 26, 2015 with ALJ Howell, designated as the hearing officer. On that date, Shirley Hartman, the property owner, was not present. ALJ Howell, as a preliminary matter, inquired into whether Phillip Hartman, Mrs. Hartman's husband, could represent Mrs. Hartman before the Board as he was not a property owner. Because Mr. Hartman admitted he was not the property owner and it was not evident that he otherwise qualified to appear under the Board's procedural rules, ALJ Howell continued the hearing, *sua sponte*, to allow the Petitioner to make appropriate arrangements to appear or be represented by an appropriate person.
13. Following the February hearing, Mr. Hartman made several filings with the Board regarding a number of issues. The Board declined to consider those filings because Mr. Hartman had failed to establish he was qualified to represent the Petitioner before the Board.⁶
14. Mr. Hartman admitted that he quitclaimed the property to his wife.⁷ He argued that his status as a spouse or de facto taxpayer conferred on him the right to represent the Petitioner before the Board. He also argued that any objections to his representation of the Petitioner should have been raised earlier. Mr. Hartman admitted that he had signed

⁵ Respondent also presented an Exhibit Coversheet. Respondent did not introduce Ex. A.

⁶ Except as discussed below, Mr. Hartman did not address the substance of those filings at the April hearing. The Board finds Mr. Hartman has waived any relief requested in those filings not raised at the April hearing.

⁷ Mr. Hartman offered no explanation as to the reasons he transferred his interest to his wife.

the Petitioner's name on both Forms 130 and 131.⁸ The Board rejects Mr. Hartman's arguments.⁹ This case, where a non-owner signs the Petitioner's name, illustrates the necessity for rules that ensure an owner has knowingly consented to representation, and that such person is qualified and not otherwise prohibited under state law.

15. As an alternative argument, Mr. Hartman tendered a limited power of attorney purporting to authorize Mr. Hartman to act as the Petitioner's "agent or petitioner" in the appeal. *See Pet. Ex. 1*. However, under the rules governing the Board, a power of attorney alone is insufficient. *See* 52 IAC 1-1-6; 52 IAC 2-3-2. Thus Mr. Hartman failed to prove he was entitled to appear on the Petitioner's behalf.

16. However, before ruling on the issue, Commissioner Elrod inquired as to why Mr. Hartman did not want the Petitioner to attend the hearing. In response, and for the first time, Mr. Hartman indicated that the Petitioner had health issues, namely asthma, COPD, and stress, that prevented her from attending. Commissioner Elrod permitted the Petitioner to appear telephonically, and she indicated that she had health issues that prevented her from appearing, and that she desired Mr. Hartman to appear on her behalf. The Petitioner acknowledged that her taxes might go up as a result of this appeal. Respondent made no objection, and Commissioner Elrod found that the requirements of 52 IAC 1-2-1.1 were substantially met in light of the Petitioner's testimony and the power of attorney. The Board affirms this preliminary ruling.¹⁰

17. Mr. Hartman has suggested that ALJ Howell and Commissioner Elrod engaged in ex parte communications with the Respondent at the February and April hearings

⁸ The Board notes that Commissioner Elrod would have been well within his discretion to dismiss the petition entirely upon learning that Mrs. Hartman's signature was forged.

⁹ In his filings prior to the hearing, Mr. Hartman made a hodge-podge of arguments drawn from criminal law, property law, and marriage law, with some citation to case law, in support of his right to represent the Petitioner before the Board. The arguments are unrecognizable in the context of an administrative hearing for a property tax appeal. When asked by Commissioner Elrod to explain the facts of one of the cases and its relevance, Mr. Hartman suggested that it was Commissioner Elrod's obligation to look it up and figure it out. The Board declines to make Mr. Hartman's arguments for him.

¹⁰ Submission of evidence regarding a disability representation under 52 IAC 1-2-1.1 must be made 5 days prior to the hearing. 52 IAC 1-2-1.1(b)(5). Commissioner Elrod would have been well within his discretion to dismiss this petition on the grounds of failure to appear by a timely and properly designated representative.

respectively. The Board finds these allegations are spurious and false. In regard to the February hearing, Mr. Hartman made filings with the Board regarding that allegation.¹¹ Mr. Hartman did not allege in his filings the substance of the communications nor who witnessed those communications. He only claimed there was a “meeting” already in progress and his case was decided before he walked in. Counsel for the Respondent made a filing with the Board categorically denying any ex parte communications between her and ALJ Howell. It appears Mr. Hartman simply presumes there were ex parte communications when he has no factual basis to support his presumption. Within minutes of arriving at the April hearing, Mr. Hartman alleged that Commissioner Elrod “was exparte-ing (sic)” before Mr. Hartman arrived, which Commissioner Elrod denied. The Board finds that neither ALJ Howell nor Commissioner Elrod engaged in any form of ex parte communication.

18. The Board notes that Mr. Hartman’s conduct required Commissioner Elrod to reprimand him for breaches of decorum, use of vulgarity, badgering the witness, telling the hearing officer to “be quiet,” and to warn him that belligerent behavior would not be permitted. The Board’s rules contemplate default or dismissal as a result of “disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative.” 52 IAC 2-10-2(a)(3). The Board finds that, had Commissioner Elrod not exercised such patience, Mr. Hartman’s conduct would have warranted dismissal.
19. Mr. Hartman objected to the hearing because the elected county assessor was not present. Counsel for the Respondent noted that the Respondent was present by counsel. Commissioner Elrod overruled the objection. The Board notes that Mr. Hartman did not utilize any Board procedures to subpoena or compel the Respondent’s attendance as a witness, and affirms the ruling. *See* 52 IAC 2-8-4.

¹¹ *See* Petitioner’s *Verified Notice to the Indiana Board of Tax Review an (sic) Petitioner Moves (sic) for a Change of Judge*. Mr. Hartman did not make any allegations of ex parte communications on the record during the February hearing. Commissioner Elrod was assigned to conduct the April hearing by the Board *sua sponte*.

20. Mr. Hartman objected to the appraisal on the grounds that he wanted to ask the appraiser “some questions” because the appraisal might be “invalid.” Mr. Hartman was offered an opportunity to *voir dire* the appraiser, Wayne Johnson, as to his qualifications. Mr. Hartman’s comments made clear he was challenging the merits of Mr. Johnson’s opinion rather than his qualifications. Commissioner Elrod overruled the objection. The Board affirms the ruling because the objection concerned the weight of the evidence rather than its admissibility.
21. Mr. Hartman objected to the inclusion of the MLS listings in the appraisal report on the grounds of accuracy. Commissioner Elrod overruled the objection as it concerned the weight of the evidence rather than its admissibility. The Board affirms the ruling.
22. The Respondent objected to Mr. Hartman’s line of questioning following Mr. Hartman’s offer to sell his property to Mr. Johnson after he declined to accept the offer. Commissioner Elrod found the line of inquiry irrelevant and sustained the objection. The Board affirms the ruling.
23. The Respondent objected to the handwritten notes on many of the Petitioner’s exhibits. Commissioner Elrod ruled that the Board would not take notice of any handwritten notes on the Petitioner’s exhibits. The Board affirms the ruling.
24. The Respondent objected to a number of Petitioner’s exhibits without expressing a clear ground for objection other than that counsel “just won’t agree” to its admission. To the extent Respondent articulated an objection, Commissioner Elrod overruled, and the Board affirms.
25. As to *Petitioner’s Ex. 1/2/3*, the Respondent objected because the document is styled as a property tax appeal petition by a number of property owners, but fails to conform to the forms and statutes for appeals. Commissioner Elrod held that the exhibit is not a Form

131 and would not be considered as such, and overruled the objection. The Board affirms.

26. As to *Petitioner Ex's. 4, 5, and 6*, which are letters from a realtor and two bankers, the Respondent objected on the grounds of hearsay. Commissioner Elrod agreed that the exhibits contain hearsay, but overruled the objection. The Board affirms and finds the exhibits may be considered but cannot form the sole basis of the Board's determination under the residuum hearsay rule.
27. As to *Petitioner Ex's. 12, 13, 14, and 15*, which are excerpts or summaries of law, the Respondent objected on the grounds of relevance. Commissioner Elrod found that the exhibits were not evidence but law, and overruled the objection. The Board affirms.
28. As to *Petitioner Ex. 16*, which is a photograph of standing water, the Respondent objected on grounds of relevance and foundation. Commissioner Elrod made further inquiry and overruled after Mr. Hartman further described the photograph. The Board affirms.

BURDEN

29. Generally, the taxpayer has the burden to prove that an 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). A burden-shifting statute creates two exceptions to that rule in I.C. § 6-1.1-15-17.2.
30. First, I.C. § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” I.C. § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor

making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” I.C. § 6-1.1-15-17.2(b).

31. Second, I.C. § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.
32. To determine whether I.C. § 6-1.1-15-17.2 applies, the Board compares the assessment for the prior tax year to the assessment as determined by the PTABOA for the tax year on appeal. The Petitioner contends that the Respondent has the burden of proof. After initially arguing otherwise, the Respondent conceded that she has the burden. Based on the Respondent’s concession, the Board makes no further inquiry and finds the Respondent has the burden of proving the correct value for the assessment.

RESPONDENT’S CONTENTIONS

33. The Respondent contends the assessed value is correct and equitable. The Respondent presented the following evidence in support of the assessment:
 - A. Wayne Johnson is a full time appraiser, MAI, Indiana certified general appraiser, and real estate broker. Mr. Johnson testified his opinion of the property’s value is in conformity with USPAP standards. He appraised the property’s fee simple true tax

value as its fair market value in use. The property's highest and best use is its current use, residential property. *Johnson testimony.*

- B. The property consists of 4.11 acres with a residence and two outbuildings. The residence is a "pole barn" or "pole structure." The residence was built in 2003. Mr. Johnson used the cost and sales comparison approaches to value the property. He considered properties in Lawrence County. Some data for the property is based on MLS listings from July of 2011 to July of 2012. The effective date of the valuation is March 1, 2012. *Johnson testimony.*
- C. Under the cost approach, Mr. Johnson estimated the land value opinion based on 6 comparable sales. The adjusted values ranged from \$18,275 to \$21,900, and he concluded that the land value was \$18,500. The new construction cost, based on Marshall & Swift data, was \$117,176.44. After adjustments for depreciation and the value of the lot, Mr. Johnson determined the value under the cost approach was \$115,000. However, the cost tables he utilized were for low quality frame construction because information on pole type construction was not available. While Mr. Johnson considered the cost approach, he weighted it secondarily. *Johnson testimony; Resp. Ex. C.*
- D. Under the sales comparison approach, Mr. Johnson compared the property to six sales. Of the six, three were indicative of value: sales #1, #2, and #5. Two of those three properties were pole construction. The other three properties were in the neighborhood and Mr. Johnson included them as evidence that properties in the market were selling at typical prices. Mr. Johnson's opinion of value under the comparable sales approach was \$100,000. Mr. Johnson concluded the sales approach was the more reliable approach, and determined the true tax value was \$100,000. *Johnson testimony; Resp. Ex. C.*

- E. On cross-examination, Mr. Johnson stated that he did not physically inspect the property and that USPAP standards do not require a physical inspection. Mr. Johnson admitted that environmental and other conditions assumed in the appraisal, if inaccurate, might or might not affect the value of the property, and the appraisal might have to be changed if the assumptions proved wrong. *Johnson testimony.*

- F. Mr. Johnson conceded that frame houses are generally more expensive construction than pole structures. Because he only appraised a pole house, he did not make a comparison for the report between frame and pole structures. Mr. Johnson did not make a determination of how a frame house would have to be adjusted in order to be comparable to a pole structure house. *Johnson testimony.*

- G. On re-direct, Mr. Johnson indicated that his opinion of value, if adjusted to reflect the subject property without central air and heat, would be \$5,500 less, which was \$94,500. *Johnson testimony.*

- H. Kirk Reller, a level III assessor-appraiser, noted that in comparing assessments it is best to have as much info as possible, not just square footage. He noted that some of the cost estimates introduced by the Petitioner had different spacing, and did not include specifics on electrical, insulation, and finishing. He agreed that the Guidelines indicate that pole structures require a 1-grade lowering compared to frame structures. *Reller testimony.*

PETITIONER'S CONTENTIONS

- 34. The Petitioner contends that the assessed value is incorrect for a number of reasons. The Petitioner presented the following evidence in support of his contentions:
 - A. Mr. Hartman challenged the reliability of the appraisal because the appraiser did not conduct a physical inspection of the property. He suggested that the appraisal was

- flawed because the subject property did not have central heat and air.¹² He questioned the reliability of the appraisal because it did not consider environmental conditions. Mr. Hartman also noted the appraisal did not consider the property's location on a private drive, which requires mailboxes and school bus pickup at the main road, and places the burden of maintenance on the owners. Mr. Hartman repeatedly pointed out that MLS listings typically have a disclaimer that listed information is not warranted and should be verified. *Hartman testimony.*
- B. Mr. Hartman argued that he was wrongly discriminated against because a quarry nearby, containing 64 acres, was purchased for \$1,167,000, assessed at \$37,000, and received a 60-80% influence factor. *Hartman testimony.*
- C. Mr. Hartman testified that the value of the property was negatively affected by pollution from the nearby quarry in the form of chemicals and dust, dynamite blasts, and loud trucks, all of which cause damage and health problems. Mr. Hartman presented pictures of the residence and vehicles covered in dust. At some point, quarry employees washed the dust off of the house and cars. *Hartman testimony.* Danny Miller, a nearby neighbor, testified that his house was damaged from rocks falling and drywall issues due to blasting at the quarry. Mr. Miller also noted that the dust prevents him from enjoying the outdoors, opening windows, and requires semi-annual carpet cleaning. *Miller testimony.* Mr. Hartman presented an inspection letter dated August 5, 2008, citing the quarry for environmental violations related to dust. *Pet. Ex. 7.* Mr. Hartman also presented a petition from a number of neighbors regarding the quarry's detrimental environmental effects on the neighborhood. *Pet. Ex. 1/2/3.*
- D. Mr. Hartman introduced a letter in which the Petitioner's realtor opines that the property should have negative influence factors based on pole vs. frame construction

¹² Mr. Hartman only implied the property lacked central heat and air during his cross-examination of Mr. Hartman. He did not present evidence regarding the HVAC of the property during his testimony.

and its proximity to the quarry. *Pet. Ex. 4*. Mr. Hartman referenced two letters from bank employees asserting that the pole structure residences cannot be used as collateral for a conventional loan. *Pet. Ex's. 6 and 7*.

- E. Mr. Hartman argued the residence was assessed at \$63 or \$73 s/f.¹³ He contended the assessment was too high compared to assessments of other frame and pole structures. Mr. Hartman presented evidence regarding several properties: at 112 Morningside a frame house assessed at \$48 s/f; at 2164 Spencer Pike a pole structure assessed at either \$53 s/f or \$23 s/f;¹⁴ at 1775 Hayes Road a pole structure assessed at \$33.41 s/f; at 301 Morningside a pole structure assessed at \$27.25 s/f; at 130 Morningside a frame house assessed at \$51.85 s/f; at 42 Morningside a frame house assessed at \$55.55; at 243 Meadowbrook a frame house assessed at \$52.65 s/f; at 275 Meadowbrook a frame house assessed at \$58.85; at 75 Meadowbrook a frame house assessed at \$57.70 s/f; at 39 Morningside a frame house assessed at \$52.00 s/f; at 242 Meadowbrook a frame house assessed at \$56.00 s/f; at 250 Meadowbrook a frame house assessed at \$53.75. Mr. Hartman argued that pole construction homes are cheaper and should be assessed at a lower rate than frame homes. *Hartman testimony; Pet. Ex's. 27, 38-54*.
- F. Mr. Hartman presented information regarding three properties owned by a current or former township trustee as examples of inaccuracy, mistakes, fraud, conspiracy, or theft against the taxpayers. The first property had a frame house assessed at \$55.50 s/f, and two pole buildings assessed at \$11 and \$4 s/f. The records for another 9 acre tract did not reflect that the tract had been subdivided. It also failed to include a pole building structure that was both the trustee's office and the residence of the trustee. Another property had a building with an E-1 rating assessed at \$35 s/f. A property owned by another trustee was assessed at \$0.00, and Mr. Hartman challenged the agricultural classification because the property was less than 5 acres. *Hartman*

¹³ Mr. Hartman was inconsistent in his testimony.

¹⁴ Mr. Hartman was inconsistent in his testimony.

- testimony.* The frame house owned by a county commissioner and assessed at \$41.42 s/f, based on bid from TK Construction, was under-assessed at least \$100,000. *Pet. Ex.'s. 55 and 56.* A frame house owned by the wife of a state senator was assessed at \$40.80 s/f. *Pet. Ex. 57.* A frame house owned by a former mayor was assessed at \$44.28 s/f. *Pet. Ex. 58.* A frame house owned by a former prosecutor was assessed at \$43.50 s/f. *Pet. Ex. 59. Hartman testimony.*
- G. Mr. Hartman referred to a number of bids for pole construction buildings, including a 24' by 36' by 10' pole building from National Barn Company for \$9,479.00; a 24' by 36' by 10' pole building from National Barn Company for \$11,050.00; a 24' by 36' by 9' pole building from Graber Post Buildings for \$7,684.01; a 24' by 36' by 8' pole building from Graber Post Buildings for \$39,500.00; a 24' by 46' by 8' pole building from Daviess County Metal Sales for \$12,909.52; and a 24' by 46' by 9' pole building from Daviess County Metal Sales for \$11,420.91. *Pet. Ex. 29-34.* Mr. Hartman also introduced the original contract for the residence's exterior construction. *Pet. Ex. 61.* He calculated the cost per square foot from each bid. He also included some informational materials and testified that the posts of a pole building will rot off at the top of the ground in 25 years. *Hartman testimony.*
- H. Mr. Hartman testified that the porches are over-assessed and that the rear porch has a wood floor but was assessed as concrete. He also suggested one or more of the outbuildings are over-assessed. Additionally, Mr. Hartman argued that the removal of an influence factor as to the land for flooding constituted a theft by the assessor. *Hartman testimony.*
- I. Mr. Hartman requested a negative 65% influence factor due to pollution. At another point he seems to argue there should be a negative 30% influence factor on the land for seasonal flooding. *Hartman testimony.*

J. Mr. Hartman noted he was aware of the quarry and that he chose to build the “cheapest damn house [he] could build” out of concerns that the market would not support a more expensive home were he to sell it. Mr. Hartman clearly indicated the main reason he appealed was because the assessor would not make herself available to him to question her personally at the PTABOA hearing. *Hartman testimony*.

ANALYSIS

35. For 2012, real property is assessed based on its "true tax value," which 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." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2(incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.
36. 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. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2012, assessment, the valuation date is March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
37. The burden is on the Respondent to prove the true tax value of the property. Mr. Johnson appraised the property at \$100,000. The testimony of Mr. Johnson establishes an expert, USPAP compliant opinion of value in conformity with generally accepted appraisal practices.

The Board finds that the Respondent has presented probative evidence that, unless rebutted, confirms the assessed value determined by the PTABOA. The Petitioner makes three basic challenges to the reliability of Mr. Johnson's opinion.

38. The Petitioner's first challenge is that the appraisal fails to consider environmental conditions related to the nearby quarry. Mr. Johnson examined a number of lot and home sales in the immediate neighborhood. In the sales comparison approach, sales #3, #4, and #6 were specifically considered for purposes of demonstrating the market in the neighborhood. Mr. Johnson concluded that there were "no apparent adverse location influences" and the sales in the neighborhood were "typical of this market." *Resp. Ex. C at 22*. This evidence establishes that there is substantial market activity from which to gauge the impact from the quarry. The Board finds that the Petitioner has failed to present sufficient evidence for the Board to question the reliability of the appraisal in regard to the environmental impact of the nearby quarry.

39. The Petitioner next challenges the reliability of the appraisal because the appraiser did not conduct a physical inspection to ascertain the actual condition of the property's electrical, HVAC, septic, etc. Mr. Johnson stated that he relied on MLS listings and a presumption of average quality and condition. Mr. Hartman did not testify that the property was less than average in quality or condition compared to other post structure buildings. Mr. Hartman did not testify that there were mold, septic, or other problems with the structure. Mr. Hartman questioned whether it was reasonable for an appraiser to rely on the photos and information in an MLS listing, but the Board notes that the MLS listing was made by the Petitioner's own realtor. Mr. Hartman did suggest that the property lacked central heat and air. In response, Mr. Johnson testified that his opinion of the property's value would be reduced to \$94,500 if the property lacked central heat and air. This value still exceeds the PTABOA's determination. The Board finds that the Petitioner has failed to bring the reliability of the appraisal into question based on assumptions regarding the condition of the property.

40. Lastly, the Petitioner expended a substantial amount of time hashing and rehashing the differences in cost and construction between frame and pole structure buildings. Mr. Johnson readily agreed that the two types of construction are different, and in fact, incomparable. Mr. Johnson weighted the cost approach secondarily because he did not have actual data for the costs of construction of pole structures. In the sales comparison approach, Mr. Johnson did not even attempt to make adjustments to compare frame to pole construction because such an adjustment would be “difficult and subjective.” The Board finds that Mr. Johnson was well aware that frame and pole structures are “apples and oranges.” The Petitioner has failed to prove that Mr. Johnson’s appraisal is unreliable.
41. Nonetheless, the Board notes a significant problem with the appraisal not raised by the Petitioner. Mr. Johnson relies on three comparables, #1, #2, and #5, in his sales comparison approach. Comparables #1 and #2 are both pole construction, like the subject property. In contrast, comparable #5 is frame construction. As just established, Mr. Johnson advised that frame and pole structures are too different to even calculate an adjustment for the differences in construction. Therefore, the Board finds that comparable #5 is not comparable, and its value should not be considered in a sales comparison approach. The Board must now consider whether the inclusion of comparable #5 in Mr. Johnson’s analysis substantially impairs the reliability of the appraisal. The adjusted sale prices were \$124,775 for comparable #5, \$97,831 for comparable #2, and \$131,905 for comparable #1. Because the flawed comparable is within the range of the remaining comparables, the Board finds that Mr. Johnson’s appraisal is reliable based on the two remaining comparables.
42. The Board finds that the Respondent has met the burden of proof and established that the true tax value is at least \$92,400.
43. The burden now shifts to the Respondent to provide more persuasive evidence of the correct value of the property. “The taxpayer must show that his suggested value

accurately reflects the property's true market value-in-use (and, consequently, that the assessor's assessed value does not).” *Grabbe v. Duff*, 1 N.E.3d 226, 228 (Ind. Tax Ct. 2013).

44. At the outset, the Board notes that Mr. Hartman seems to believe that a property tax appeal hearing is a soapbox for the airing of grievances against local officials. Mr. Hartman freely admitted that the main reason for appealing the Petitioner’s assessment was his desire to confront the Assessor in person rather than correct the assessment.¹⁵ The issue before the Board is the true tax value of the Petitioner’s property, not Mr. Hartman’s unrelated allegations of “favoritism, nepotism, and rascalism.”
45. The first task for the Petitioner is to assert the correct value for the assessment. Mr. Hartman failed to expressly articulate his opinion of the value of the residence. At one point in the hearing, Mr. Hartman literally offered to sell Mrs. Hartman’s home to Mr. Johnson, the appraiser, for \$65,000.¹⁶ However, he never testified that such amount reflected its fair market value in use. At other points, Mr. Hartman requests 60% and 30% negative influence factors for pollution and flooding. But he never states how those numbers should be applied nor what the correct assessed value should be.
46. The Board accepts at face value Mr. Hartman’s testimony that he intentionally built the cheapest house he could: a pole structure that is of such inferior quality that it will rot off its posts within three decades and no lender will accept it as collateral. The Board further accepts at face value that he chose to build his home on soggy acreage in a dusty, noisy, polluted, undesirable neighborhood without public streets. That does not resolve the question before the Board: What is the fair market value-in-use of the residence, outbuildings, and acreage? The Petitioner was evidently optimistic in 2012 that the property could be listed at \$119,000, and Mr. Hartman suggested he would take as low as

¹⁵ This once again illustrates why the Board has strict rules about who can appear before the Board on behalf of a taxpayer. Mr. Hartman’s ulterior motives for appealing the assessment are not necessarily shared by Mrs. Hartman.

¹⁶ The Board notes, as discussed earlier, that Mr. Hartman does not own the property and could not offer to sell it to anyone. Despite his claims of earnestness, the Board finds Mr. Hartman was making a rather juvenile and rhetorical argument.

\$65,000 on the hearing date. The Board can rely on an opinion of value only if it is based on reliable and quantifiable evidence.

Indiana law makes clear that the probative value of an opinion depends on whether the proponent of that opinion has shown that he adhered to generally recognized appraisal principles in formulating the opinion. This requirement remains the same whether an assessing official, an appraiser, or a taxpayer is the proponent of the opinion.

Grabbe, 1 N.E.3rd at 231 (internal citations omitted). Mr. Hartman made no effort to adhere to generally recognized appraisal principles, and the Board finds, to the extent he offered an opinion of value, his testimony was entirely unsupported.

47. Mr. Hartman did attempt a rudimentary cost analysis by presenting the original contract to build the exterior structure of his home in 2002 for \$12,400 at \$7.20 s/f for the 1,728 s/f structure. But that contract did not include doors, windows, concrete floors, gutters, downspouts, etc. Mr. Hartman did not provide any evidence of expenditures for the rest of the construction of the exterior, interior, electrical, utilities, porches, etc. Mr. Hartman submitted a number of “bids” or advertisements for pole construction buildings. But none of them reflected the cost to build a 1,728 s/f home with finished living space and attached garage.¹⁷ Furthermore, the analysis did not reflect the cost to build in 2012, failed to apply depreciation from 2003-2012, and ignored the value of the land and outbuildings. “The cost approach attempts to estimate the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value.” *State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341, 343 n.2 (Ind. 2002) (internal quotations omitted).

48. Mr. Hartman went through a litany of property record cards where he looked solely at the cost per square foot of frame and pole construction buildings and noted the disparity compared to his own property. Mr. Hartman did not endeavor to establish, under

¹⁷ The closest bid is found in Pet. Ex. 32, but it describes a structure half the size of the subject residence and a foot shorter, uses smaller posts, wider end post spacing, and lacks any specifics regarding the finishing. It provides no probative evidence of the cost to build the subject property and cannot be considered a gauge for considering a cost per square foot comparison.

generally accepted appraisal practices, a comparison analysis that would suggest the appropriate valuation of the subject property. A comparison of square footage alone is inadequate. *See Long*, 821 N.E.2d at 470.

49. Finally, Mr. Hartman made some contentions regarding individual aspects of the property's assessment, including the cost and construction of the porches and outbuildings, and influence factors for pollution and flooding.

Beginning in 2002, however, Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use. As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.

Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). These are simply challenges regarding methodology, and fail to establish the market value-in-use of the property as a whole.

CONCLUSION

50. The Respondent established a prima facie case that the assessed value of the subject parcel is correct, and the Petitioner failed to rebut that evidence.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the correct assessed values are those set forth by the PTABOA: \$22,800 for the land and \$69,600 for the improvements (totaling \$92,400).

ISSUED: June 2, 2015

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after 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>>.