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

Petitions:	**07-002-03-1-5-00044**
	07-002-03-1-5-00072
	07-002-03-1-5-00080
Petitioners:	**Anthony and Janet Elrod**
Respondent:	**Jackson Township Assessor (Brown County)**
Parcels:	**0080149000**
	0081389006
	0081389005
Assessment Year:	**2003**

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

Procedural History

1. Anthony and Janet Elrod own three adjoining parcels that they use as a single property. On or after May 10, 2005, they filed Form 130 petitions asking the Brown County Property Tax Assessment Board of Appeals ("PTABOA") to reduce each parcel's assessment. The PTABOA issued a determination for each parcel on December 19, 2006.

2. On January 22, 2007, the Elrods filed Form 131 petitions asking the Board to review their assessments. They elected to proceed under the Board's rules for small claims.

3. On February 27, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack ("ALJ"). Neither the Board nor the ALJ inspected the property.

4. Persons present and sworn in at hearing:

a) For the Elrods: Anthony Elrod

b) For Jackson Township: Shelia M. Blake, Brown County Assessor's authorized representative[1]

Facts

5. The property consists of a homesite and two vacant parcels located at 11020 North Shore Drive, Unionville, Indiana.

6. The record is unclear about the actual amount of the assessments that the PTABOA determined. Each Form 115 determination shows that one member moved to reduce the subject house's value by 50% and to value the two vacant lots at $3,500 per acre. The motion passed unanimously. *Board Ex. A.* When multiplied by the size of the vacant lots (.6520 acres and .5780 acres, respectively), the $3,500-per-acre rate yields assessments of $2,300 (parcel 081389006) and $2,000 (parcel 0081389005). The front pages of the Form 115s, however, list assessments of $3,200 and $2,900. *Id.*

7. Thus, it appears that the discrepancies stem from simple mathematical errors. And the parties agree that the assessments of record are the lower amounts.

8. Thus, the Elrods' property is currently assessed as follows:

Parcel #	Land	Improvements
0080149000	$8,300	$24,200
0081389006	$2,300	$0
0081389005	$2,000	$0

9. The Elrods requested the following values on the Form 131 petitions:

Parcel #	Land	Improvements
0080149000	$800	$24,200
0081389005	$1,000	$0[2]

[1] The Jackson Township Assessor—not the Brown County Assessor— is the proper respondent in these appeals because he made the original assessment determinations and the PTABOA issued its determinations before June 30, 2007. Public Law 219-2007 amended Ind. Code § 6-1.1-15-3 to provide that, for PTABOA determinations issued after June 30, 2007, the county assessor is the party to defend the PTABOA determination. *See* Ind. Code § 6-1.1-15-3(b) (2007); P.L. 219-2007 §§ 39, 156(c). Before that amendment, the statute identified the official that made the original assessment under review as the party to defend that assessment before the Board. Ind. Code § 6-1.1-15-3(a) (2006). The Brown County Assessor could have appeared as an additional party by filing a notice of appearance prior to the hearing. Ind. Code § 6-1.1-15-3(p)(2006); *see also* Ind. Admin. Code tit. 52, r. 2-2-6(b), but did not do so. Nonetheless, given that the issue of representation was not raised at the hearing, the Board will address Ms. Blake's evidence and arguments as if they were properly made on the Jackson Township Assessor's behalf.

[2] Mr. Elrod does not dispute the value of Parcel 0081389006. He appealed that parcel's assessment because the front of the Form 115 determination listed it as $3,200. But he does not dispute the agreed assessment of record. *A. Elrod testimony.*

Year of Appeal

10. Before addressing the Elrods' substantive claims, the Board must resolve the parties' dispute about which assessment year is under appeal. The Elrods claim that their appeals address the March 1, 2002 assessment date, while the Assessor claims that those appeals are for the March 1, 2003 assessment.

11. At the time the Elrods initiated the appeal process, an appeal's effective date was controlled by the date on which a taxpayer requested a preliminary conference with the local official that made the disputed assessment. IND. CODE § 6-1.1-15-1 (a)-(d) (2004). In order for an appeal to be effective for a given assessment date, the taxpayer had to make that written request by the later of May 10 of that year or 45 days after being given notice of a change in assessment. *Id.* There was also a non-code provision allowing taxpayers to appeal their 2002 assessments within 45 days after receiving a tax bill based on that assessment. *See* P.L. 1-2008 § 78. If a taxpayer requested a preliminary conference outside those deadlines, its appeal essentially rolled over to the next assessment date. I.C. § 6-1.1-15-1 (c)-(d) (2004).

12. The Elrods did not initiate their appeals within the time necessary to affect their March 1, 2002, assessments. While their Form 130 petitions are not file stamped, Mr. Elrod signed them on May 10, 2005. *Board Ex. A*. And the Elrods did not offer any evidence to show that they received either a notice of change in assessment or a tax bill based on the March 1, 2002 assessment within 45 days of filing those Form 130 petitions.

13. In fact, the record does not even clearly show that the Elrods filed their Form 130 petitions in time to contest their 2003 assessments. The Assessor, however, concedes their timeliness for that purpose. The Board therefore treats the Elrods' appeals as timely for the March 1, 2003, assessment date.

Merits

Parties' Contentions

14. The Elrods offered the following evidence and arguments:

    a) The Elrods believe that the land assessments for two of their three parcels do not adequately account for flooding. As part of the original drainage for Lake Lemon, the parcel was intentionally designed to flood. According to Mr. Elrod, approximately 1/3 of that lot is constantly under water. And the entire lot floods two or three times per year. *A. Elrod testimony; Pet'rs Exs. 2, 3, 5.*

    b) The city of Bloomington has a flowage easement over Lot 9H. That easement requires the Elrods to keep the lot open; they can't fill it in, cover it up, or build on it. Mr. Elrod contends that no one would pay $2,000 for the lot and he believes it is worth $1,000 or less. *A. Elrod testimony; Pet'rs Ex. 4.*

c) The PTABOA valued the vacant lots on both sides of the Elrods' homesite (parcel 0080149000) at $3,500 per acre. It valued the homesite lot higher because it viewed that lot as a building site. But the homesite is no more valuable than the other two lots. It floods twice a year and has issues with its water and septic systems. The Elrods currently use a shallow well for washing and bare necessities, and they have been drinking bottled water for the past 30 years. Installing water service and an adequate septic system would be cost prohibitive. *A. Elrod testimony; Pet'rs Exs. 7-8.*

d) Mr. Elrod believes that the homesite should be valued at $3,500 per acre, which would result in an assessment of approximately $875. *A. Elrod testimony.*

15. The Assessor offered the following evidence and arguments:

a) The Assessor contends that the Elrods did not make a prima facie case because they did not offer any evidence of their property's market value. Also, Ms. Blake testified that the Elrods currently have a working septic system. *Blake testimony; A. Elrod responses.*

b) The Assessor also apparently believes that the Elrods' lots are actually under-assessed and asks the Board to raise each parcel's land value. To support its argument, the Assessor offered sales information for three purportedly comparable properties. Two of the three properties are located on Lake Lemon itself, and all three have experienced flooding similar to the Elrods' property. *Blake testimony; Resp't Ex. 2-4.*

c) The first property, located on Dorothy Lane, is very close to the Elrods' property. The houses on the two properties are about the same age and are "somewhat" similar to each other. And the Dorothy Lane property floods to the same degree as shown in photographs of the Elrods' property. The Dorothy Lane property sold for $82,000 in October 2002. *Blake testimony; Resp't Ex. 2.*

d) The other two properties are located directly on Lake Lemon within 1.7 miles of the Elrods' property. The property located on Gray Avenue sold for $184,000 in 2003. After deducting the improvement's assessed value from the sale price, the land value is $87,000. *Blake testimony; Resp't Ex. 4.*

e) The property located on Oak Lane has a house that is similar to the Elrods' house in terms of age and grade. It sold for $410,000 in 2004. That property is right on the water and Ms. Blake personally saw it flood. After deducting the improvements' assessed value from the property's the sale price, the land is worth $350,000. And the Oak Lane lot is smaller than two of the Elrods' lots. *Blake testimony; Resp't Ex. 3.*

f) During the flood of 2006, Ms. Blake viewed all four properties, and the water from the rising lake affected them all. Flooding is part of owning a lake property.

The comparable properties' sale prices show that, regardless of flooding and or inconvenience, land in the area still sells for "high dollar" values. *Blake testimony; Resp't Exs. 2, 3, 4.*

Record

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

a) The Form 131 petition,

b) The digital recording of the hearing,

c) Exhibits:

Petitioners Exhibit 1: Petitioners' statement & PTABOA hearing notice,
Petitioners Exhibit 2: Original 1955 plot plan,
Petitioners Exhibit 3: Current aerial view of property,
Petitioners Exhibit 4: Copy 1954 agreement with City of Bloomington,
Petitioners Exhibit 5: Photographs showing normal pool and flood,[3]
Petitioners Exhibit 6: Photographs house flood,
Petitioners Exhibit 7: Breakdown Brown County Water,
Petitioners Exhibit 8: Breakdown septic system,
Petitioners Exhibit 9: PTABOA Findings for all three parcels,[4]

Respondent Exhibit 1: Property Record Card ("PRC") for parcel 0081389006,
Respondent Exhibit 2: Sale information for 4698 Dorothy Lane,
Respondent Exhibit 3: Sale and assessment information for 9345 Oak Lane,
Respondent Exhibit 4: Sale and assessment information for 9262 North Gray Avenue,
Respondent Exhibit 5: PRC for parcel 0080149000,
Respondent Exhibit 6: PRC for parcel 0081389005,
Respondent Exhibit 7: Aerial photograph showing the three comparable properties,

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing Sign-In sheet,
Board Exhibit D: Respondent's Notice of Appearance.

d) These Findings and Conclusions.

[3] The Assessor objected to the admission of Petitioners' Exhibit 5. The ALJ overruled the objection and admitted the exhibit.
[4] The Elrods' exhibit list identifies exhibits 10 and 11, but Mr. Elrod did not offer those exhibits at the hearing.

Analysis

Burden of Proof

17. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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).

18. In making its case, the petitioner 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").

19. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner'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.

The Elrods' Case

20. The Elrods did not make a prima facie case for a change in assessment. The Board reaches this conclusion for the following reasons:

    a) 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). The appraisal profession traditionally has used three methods to determine a property's market 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.

    b) 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. P/A Builders & Developers, LLC,* 842 N.E.2d 899 (Ind. Tax 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 the Uniform Standards of Professional Appraisal Practice often suffices. *Id*.; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c) The Elrods dispute the land values assigned to two of their three lots. *A. Elrod testimony.* They base their claims almost entirely on the fact that the lots flood, although they also point to problems with their property's water and septic systems.

d) While those problems may indeed affect the subject property's value, the Elrods did not offer any market-based evidence to quantify that effect. At best, Mr. Elrod testified about estimated costs for hooking-up to municipal water services and installing a new septic system. But simply identifying those costs does little to quantify the property's market value-in-use.

e) Because the Elrods offered no probative market-based evidence, they failed to make a prima facie case of error.

21. The Assessor similarly failed to make a prima facie case for increasing the subject property's assessment. The Board reaches this conclusion for the following reasons:

a) As an initial matter, it is not entirely clear whether the Assessor is actually requesting the Board to increase the property's assessment. Ms. Blake argued that the Board should reverse the "correction" and order that the vacant parcels be assessed at $3,500 per acre. But the only "correction" the parties discussed involved the Assessor changing its records to reflect assessments for the vacant parcels that were lower than the numbers contained on the front pages of the PTABOA's Form 115 determinations. And those lower values actually reflect the $3,500-per-acre rate that Ms. Blake argued for.

b) Nonetheless, the Board will address the Assessor's nominal request to increase the subject property's assessment. The Assessor based that request on sales information for what Ms. Blake described as comparable properties. While the sales-comparison approach is a generally accepted method for valuing real property, a party relying on that approach must show how the property being valued compares to other properties that have sold in the marketplace. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). It is not enough to say that properties are "similar" or "comparable" to each other. *Id.* The party must also adjust the sale prices for the comparable properties to account for relevant ways in which they differ from the property being valued. *Id*.

c) Ms. Blake did little more than simply assert that the properties she relied on were comparable to the Elrods' property. And she did not adjust the purportedly comparable properties' sale prices to account for relevant differences. At most, she simply subtracted the assessed value of improvements to derive a land value for each property. But that impermissibly mixes the Guidelines' mass-appraisal cost approach and the market-based sales-comparison approach.

d) Finally, Ms. Blake failed to explain how the purportedly comparable sales, all of which occurred from 2002 to 2004, related to the subject property's value as of

the relevant January 1, 1999, valuation date. *See Long*, 821 N.E.2d 471(holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value because the taxpayers did not explain how it related to the property's value as of January 1, 1999).

e) The Board therefore denies the Assessor's request to increase the vacant parcels' land assessments.

Conclusion

22. The Elrods failed to make a prima facie case for lowering their properties' assessments. And the Assessor similarly failed to make a prima facie case to support increasing those assessments. The Board therefore determines the assessments should remain as follows:

Parcel #	Land	Improvements
0080149000	$8,300	$24,200
0081389006	$2,300	$0
0081389005	$2,000	$0

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments of record remain unchanged. And the assessments of record are for the amounts set forth in these findings and conclusions.

ISSUED: **May 13, 2008**

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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>