

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

Petitioners: David K. Wolf, Trustee
Mary Haynes Wolf, Trustee
Petition Nos.: 76-011-07-1-5-00327
76-011-08-1-5-00114
76-011-09-1-5-00016
76-011-07-1-5-00326
76-011-08-1-5-00113
76-011-09-1-5-00017
Respondent: Steuben County Assessor
Parcel Nos.: 76-06-10-220-236.000-011 [Parcel 236]
76-06-10-220-237.000-011 [Parcel 237]
Assessment Years: 2007, 2008, and 2009

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

Procedural History

1. David K. Wolf and Mary Haynes Wolf filed six Form 130 petitions challenging the above-captioned parcels’ 2007, 2008, and 2009 assessments. The Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations for the 2007 and 2008 assessments on January 5, 2010 and its determinations for the 2009 assessments on June 21, 2011. The determinations for 2007 and 2008 lowered the parcels’ assessments, although not to the level that the Wolfs had requested.
2. The Wolfs timely filed six Form 131 petitions with the Board and elected to have their appeals heard under the Board’s small claims procedures. On February 16, 2012, the Board held a hearing on all six petitions through its administrative law judge, Jennifer Bippus (“ALJ”).
3. The following people were sworn in and testified:
 - a) David K. Wolf
Mary Haynes Wolf
 - b) Marcia Seevers, Steuben County Assessor
Phyl Olinger, representative

Facts

4. The subject parcels are located at 460 Lane 280 East, Lake James in Angola, Indiana. On the assessment dates in question, parcel 76-06-10-220-236.000-011 (“Parcel 236”) contained a cottage and a shed. The cottage was assessed at \$15,300 and the shed was assessed at \$100. Parcel 76-06-10-220-237.000-011 (“Parcel 237”) abuts Parcel 236. Both parcels front Lake James. Except where otherwise indicated, the Board will refer to the parcels collectively as “the subject property.”
5. Neither the Board nor the ALJ inspected the Wolfs’ parcels.
6. The PTABOA determined the following values:

March 1, 2007

Parcel	Land	Improvements	Total
236	\$256,600	\$15,400	\$272,000
237	\$92,100	\$0	\$92,100
Combined Total			\$364,100

March 1, 2008

Parcel	Land	Improvements	Total
236	\$256,600	\$15,400	\$272,000
237	\$92,100	\$0	\$92,100
Combined Total			\$364,100

March 1, 2009

Parcel	Land	Improvements	Total
236	\$285,100	\$15,400	\$300,500
237	\$107,100	\$0	\$107,100
Combined Total			\$407,600

7. The Assessor testified that the land assessments listed in the PTABOA’s determinations for March 1, 2009, which actually match what the Assessor determined for all three assessment years, were typographical errors. According to the Assessor, the PTABOA intended its determinations to be the same for all three assessments. Indeed, elsewhere in the determinations, the PTABOA indicates that “[t]he Board has determined to use the outcome of your pending Indiana Board of Tax Review determinations for 2007 and 2008 appeals to serve as the outcome to this petition.” *Board Ex. A*. And the Assessor has treated the parcels’ 2009 assessments as being the same as the PTABOA-determined assessments for 2007 and 2008.
8. Despite the arguable ambiguity, the PTABOA listed specific values in its determinations, and those values are the assessments of record. Nonetheless, as explained below, the

Board accepts the Assessor's concession that the assessments should be the same for all three years and orders the March 1, 2009 assessments to be changed accordingly.

8. At the Board's hearing, the Wolfs requested the following values:¹

March 1, 2007

Parcel	Land	Improvements	Total
236	\$183,120	\$0 ²	\$183,120
237	\$69,760	\$0	\$69,760
Combined Total			\$252,880

March 1, 2008

Parcel	Land	Improvements	Total
236	\$181,356	\$0	\$181,356
237	\$69,088	\$0	\$69,088
Combined Total			\$250,444

March 1, 2009

Parcel	Land	Improvements	Total
236	\$179,592	\$0	\$179,592
237	\$68,416	\$0	\$68,416
Combined Total			\$248,008

Summary of Parties' Contentions

9. The Wolfs' evidence and contentions:
- a) The subject property is assessed for more than it is worth. The property's lake frontage is muck and weeds rather than sand and gravel or a beach. The muck extends into the lake, making it impossible to swim even 30 feet from shore. Also, because parcel 237 is only a half-lot setback regulations would prevent the Wolfs from building anything on it. *D. Wolf testimony.*
 - b) The cottage that was on the property as of the assessment dates at issue was valueless. It had no heat, the roof was leaking, and it had asbestos siding. The cottage also had problems with mold and rot, and it had bare wires. To make matters worse, rodents had caused extensive damage. It got to the point that none of the Wolfs' relatives could spend any time in the cottage. The Wolfs ultimately demolished the cottage in October or November of 2011. As of the Board's hearing, they were building a new house. *D. Wolf testimony.*

¹ The Wolfs asked for different values on their Form 131 petitions.

² Although the Wolfs did not specifically request a \$0 value for their improvements, they argued that their improvements were virtually valueless.

- c) The Wolfs offered two separate appraisals from Ronald Matthews, a certified appraiser. *Pet’rs Exs. 5-6*. In each appraisal, Mr. Mathews valued the parcels together as one economic unit and certified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Id.*
- d) In the first appraisal, Mr. Matthews valued the land only, finding that the “market appeal [was] for the land,” and that the “[p]resent summer cottage is ready for tear down process” and could possibly even hurt the property’s value because of the asbestos siding. *Pet’rs Ex. 5*. He therefore found that the property’s highest and best use would be to remove the cottage and build a new home. Thus, Mr. Matthews valued only the subject land, using three comparable properties with homes that either were in poor condition or had recently been demolished.
- e) The properties sold August 2007 and November 2007 for prices ranging from \$270,000 to \$335,000. Two of the properties had similar amounts of lake frontage as the subject property—50 feet and 57 feet, compared to the subject property’s 59 feet.³ A third had 170 feet of lake frontage. Also one of the lots was irregularly shaped. Mr. Matthews, however, did not adjust any of the comparable properties’ sale prices to account for ways in which they differed from the subject property. Instead, he simply determined that the comparable properties sold for an average price of \$4,360 per front foot and multiplied that per-unit price by the subject property’s frontage to arrive at a value of \$257,200 as of September 20, 2008. *Pet’rs Ex. 5*.
- f) In his second appraisal, Mr. Matthews estimated the subject property’s market value at \$500,000 as of January 29, 2012. This time, however, Mr. Matthews appraised the parcels as proposed for new construction and selected his comparable properties accordingly. He also included a Land Addendum in which he valued the subject land at \$4,150 per front foot, or \$244,850. *Pet’rs Ex. 6*.
- g) To determine values for the years between Mr. Matthews’s two appraisals, the Wolfs divided the difference in the appraisals’ estimated front foot values (\$210) by five to arrive at annual depreciation of \$42 per front foot. That translated to the following values for the assessment dates under appeal:

<u>Assm’t Date</u>	<u>Front Foot Value</u>	<u>Overall Value</u>
March 1, 2007	\$4,360	\$252,880
March 1, 2008	\$4,318	\$250,444
March 1, 2009	\$4,276	\$248,008

See D. Wolf testimony; Pet’rs Ex. 7.

- h) Finally, the Wolfs noted that the Assessor’s comparable properties were assessed for less than their sale prices. If those sale prices were not used to assess the comparable

³ That was the amount of frontage that Mr. Matthews used in his appraisal. The Wolfs offered a survey that Mr. Wolf claimed shows the property as having a total of 58.2 feet of frontage. *D. Wolf testimony; Pet’rs Ex. 4.*

properties, they should not be used to assess the subject property either. *D. Wolf argument.*

10. The Assessor's evidence and contentions:

- a) Mr. Mathews prepared his second appraisal too recently for it to be relevant to the subject property's true tax value for any of the assessment years at issue here.
- b) While Mr. Matthews's first appraisal is at least closer to the valuation dates at issue in the Wolfs' appeals, it is unreliable. For his comparables, Mr. Matthews used inferior properties from outside the subject property's neighborhood. The Real Property Assessment Guidelines for 2002 – Version A, however, require assessors to define neighborhoods according to nine factors. *Olinger testimony; Resp't Ex. 5.* Mr. Matthews's did not apply those factors in choosing his comparable sales. Two of Mr. Matthews's sales are from different townships than the subject property. And all three sales are from assessment neighborhoods with lower land base rates than the subject property's neighborhood. *Olinger testimony; Resp't Ex. 8.* Similarly, the average sale prices in the three comparables' neighborhoods ranged from \$244,292 to \$332,500, while the average sale price in the subject property's neighborhood was \$390,375. *Olinger testimony; Resp't Ex. 11.*
- c) In addition, Mr. Matthews's first comparable sale involved a triangular lot that is located next to a business. Yet he made no adjustment to the sale price to reflect either of those facts. *SeEVERS testimony; Resp't Ex. 5.*
- d) The Assessor's representative and witness, Phyl Olinger, also offered her own sales-comparison analysis. She used four sales from the subject property's neighborhood that occurred in 2006-2007. She then subtracted the assessed value of each property's improvements from the property's total sale price to reach the following abstracted land values:

<u>Owner</u>	<u>Price</u>	<u>Date</u>	<u>Land Value</u>	<u>Front Foot Value</u>
Franz	\$255,000	12/5/07	\$205,800	\$8,071
Elbrecht	\$511,500	10/13/06	\$371,800	\$14,164
Bane	\$500,000	9/6/06	\$142,500	\$15,476
Gardner	\$295,000	10/3/06	\$295,000	\$5,177

The properties sold for an average price of \$6,500 per front foot. *Olinger testimony; Resp't Ex. 9.*

Record

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

- a) The Form 131 petitions,
- b) A digital recording of the hearing,

c) Exhibits:

- Petitioners' Exhibit 1: Form 131 petitions for March 1, 2007 assessment,
- Petitioners' Exhibit 2: Form 131 petitions for March 1, 2008 assessment,
- Petitioners' Exhibit 3: Form 131 petitions for March 1, 2009 assessment,
- Petitioners' Exhibit 4: November 11, 2011 Boundary Survey,
- Petitioners' Exhibit 5: Appraisal of Real Property by RL Matthews, dated September 20, 2008,
- Petitioners' Exhibit 6: Appraisal of Real Property by Ronald Matthews, dated January 29, 2012,
- Petitioners' Exhibit 7: Petitioners' Basis of Value.

- Respondent Exhibit 1: Respondent Exhibit Coversheet,
- Respondent Exhibit 2: Summary of Respondent Testimony,
- Respondent Exhibit 3: Power of Attorney certification attached to Power of Attorney,
- Respondent Exhibit 4: Property record card ("PRC") for parcel 236,
- Respondent Exhibit 5: PRC for parcel 237,
- Respondent Exhibit 6: Appraisal of Real Property by Ronald Matthews, dated September 20, 2008,
- Respondent Exhibit 7: Beacon website data for comparables that Mr. Matthews used in his land appraisal,
- Respondent Exhibit 8: Beacon aerial map with information for parcel 236 and handwritten notes regarding the locations of Mr. Matthews' comparables and the subject parcels,
- Respondent Exhibit 9: Spreadsheet concerning the Assessor's four comparable sales; PRCs for comparable sales listed in spreadsheet plus PRC for 160 Ln 280 Lk James,
- Respondent Exhibit 10: Beacon aerial map with information for parcel 236 and handwritten notes showing location of subject parcels and Assessor's comparables,
- Respondent Exhibit 11: Three sets of Beacon sales data with the following handwritten notes at the top: "Jamestown Twp. appraisal comp #1," "Jamestown Twp. appraisal comp #2," and "Pleasant Twp. appraisal comp #3,"
- Respondent Exhibit 12: Respondent Signature and Attestation Sheet.

- Board Exhibit A: Form 131 petitions,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusion

Analysis

A. Burden of proof and types of market value-in-use evidence

12. 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.
13. 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.
14. 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 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 acceptable appraisal principles. MANUAL at 5.
15. Regardless of the method used to rebut an assessment’s presumed 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 January 1, 1999 value.”) For March 1, 2007 assessments, the valuation date was January 1, 2006. For March 1, 2008 assessments, the valuation date was January 1, 2007. And for March 1, 2009 assessments, the valuation date was January 1, 2008. 50 IAC 21-3-3(2009).

B. The Wolfs did not prove that the subject property's assessment should be reduced as much as they requested.

16. The Wolfs proved that their cottage had only nominal value and that the subject property's assessment should be reduced accordingly. Also, the Assessor conceded that the subject property's March 1, 2009 land assessment should be the same as it was in 2007 and 2008. The Wolfs, however, did not prove that they were entitled to any further reductions. The Board reaches these conclusions for the following reasons:
- a) The Wolfs rely primarily on two appraisal reports prepared by Ronald Matthews. In the first report, Mr. Matthews estimated the value of the land only at \$257,200 as of September 20, 2008. He used a generally accepted valuation approach—the sales-comparison approach—and certified that he prepared his appraisal in conformance with USPAP. And he estimated the property's value as of a date that was within nine months of the valuation date for the March 1, 2009 assessment based solely on sales that occurred during the period used by assessors for computing March 1, 2008 assessments. Thus, at first blush, Mr. Matthews's appraisal appears to be probative of the subject property's true tax value for two of the three assessment years under appeal.
 - b) Nonetheless, while Mr. Matthews's appraisal might be probative in form, it is not probative in substance. As the Assessor points out, Mr. Matthews did not adjust his comparable properties' sale prices to account for key ways in which those properties differed from the subject property. Indeed, Mr. Matthews did not make any adjustments whatsoever. While the Assessor focused on Mr. Matthews's failure to adjust the first comparable property's sale price to account for its triangularly shaped lot and location near a business, Mr. Matthews's treatment of that sale had an even more glaring problem—the comparable property had 170 feet of lake frontage compared to 59 feet for the subject property.
 - c) That difference is significant because the value for a residential lot often does not increase in direct proportion to its size. *See* GUIDELINES, ch. 2 at 78 (recognizing an “excess frontage” influence factor to account for “[a] decrease based on the lower utility value of frontage that is significantly in excess of the base lot frontage); *see also, id.* at 71-73 (providing an Acreage Size Adjustment Table to account for the proportionally higher per-acre value of smaller lots than of lots that are closer to one acre). Of course, that is not necessarily true in every case. But Mr. Matthews own data strongly supports the inference that it is true here—the two lots that were close to the subject property's size sold for \$6,700 and \$4,736 per front foot, respectively, while the lot with 170 front feet sold for only \$1,641 per front foot.
 - d) Despite the huge per-unit price disparity, Mr. Matthews simply averaged the three sales to estimate the subject property's value. And that profoundly affected his valuation opinion. If one simply excludes the first comparable property's sale price, the average for the other two would be \$5,718 per front foot, or \$337,362 when multiplied by the subject property's 59 front feet. That is remarkably close to the subject property's land assessment (\$348,700) for the two years to which Mr.

Matthews's appraisal arguably relates. By contrast, including the first comparable property's sale price brings the average down to \$4,360 per front foot, or \$257,000.

- e) In light of that disparity, and the absence of any explanation as to why Mr. Matthews failed to adjust his comparable properties' sale prices, the Board gives the overall valuation opinion from Mr. Matthews's first appraisal report no weight.
- f) The Wolfs also offered a second appraisal report from Mr. Matthews in which he estimated the subject property's land value at \$244,850 as of January 29, 2012. But unlike Mr. Matthews's first report, that second report does not even arguably relate to any of the valuation dates at issue in these appeals. The Wolfs tried to provide the missing relationship by plotting straight-line depreciation between the land values contained in the two reports. Even if the Board were to generally accept the Wolfs' underlying premise of straight-line depreciation, one would have to start with a reliable valuation in year one. And the Board has already found that the Wolfs' year-one valuation—Mr. Matthews's first appraisal—is too unreliable to be given any probative weight.⁴
- g) That leaves the Wolfs' evidence about the condition of subject property's shoreline and cottage. While the shoreline's condition is relevant to the subject property's value, it does little by itself to quantify the property's market value, or even to quantify a likely range of values.
- h) The evidence about the cottage's condition, however, is another matter. Mr. Wolf testified to extreme deterioration as well as to an environmental hazard—the cottage's asbestos siding. Indeed, in light of those factors, Mr. Matthews believed that the cottage contributed nothing to the property's overall value, and that the cottage might actually have detracted from the property's value. Mr. Wolf supported Mr. Matthews's opinion, testifying that the cottage's condition made it unusable and led to the Wolfs demolishing it. While the record is a little unclear as to date on which the cottage became unusable, Mr. Matthews found it to be valueless on September 20, 2008. It was likely in similar condition on the March 1, 2007 and March 1, 2008 assessment dates. The Board therefore finds that the cottage had only nominal value and that the cottage's assessment should be reduced to \$100 for each assessment year.
- i) Finally, although the PTABOA's determinations for the subject parcels' March 1, 2009 land assessments are higher than its determinations for the parcels' land assessments for the two preceding years, the Assessor explained that the difference was a topographical error and that the parcels' assessments should be the same for all three assessment years under appeal. The Board accepts the Assessor's concession.

⁴ In any case, the Wolfs' methodology would not have served to relate Mr. Matthews's second appraisal back to the January 1, 2006 valuation date for the Wolfs' appeal of the subject property's March 1, 2007 assessment because the starting point for the Wolfs' depreciation calculation (Mr. Matthews's second appraisal report) was more than two years after that valuation date.

Conclusion

17. Although the Wolfs proved that their cottage had only nominal value, they did not offer probative evidence to justify reducing the subject property's land assessments. The Assessor, however, conceded that the land assessment for 2009 should match its 2007 and 2008 assessments. The Board therefore finds that the property had the following true tax values for the three assessment years at issue:

March 1, 2007

Parcel	Land	Improvements	Total
236	\$256,600	\$200 ⁵	\$256,800
237	\$92,100	\$0	\$92,100
Combined Total			\$348,900

March 1, 2008

Parcel	Land	Improvements	Total
236	\$256,600	\$200	\$256,800
237	\$92,100	\$0	\$92,100
Combined Total			\$348,900

March 1, 2009

Parcel	Land	Improvements	Total
236	\$256,600	\$200	\$256,800
237	\$92,100	\$0	\$92,100
Combined Total			\$348,900

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review finds that the subject parcels' assessments should be reduced to the amounts set forth above.

⁵ The \$200 represents the cottage's nominal value of \$100 together with the \$100 assessment of a shed.

ISSUED: May 16, 2012

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.