REPRESENTATIVE FOR PETITIONER:
Michael Friskney, Owner

REPRESENTATIVE FOR RESPONDENT:
Kim Gephart, Noble County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Michael Friskney,	)	Petition No.: 57-005-06-1-5-00035
	)	57-005-06-1-5-00037
	)	57-005-06-1-5-00038
Petitioner,	)	
	)	Parcel No.: 57-04-16-100-186.000-011
	)	57-04-16-100-204.000-011
v.	)	57-04-19-100-202.000-011
	)	
	)	County: Noble
Noble County Assessor,	)	
	)	Township: Orange
	)	
Respondent.	)	Assessment Year: 2006

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

November 12, 2008

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Michael Friskney appealed the assessments for three related parcels. He focused mainly on limitations that would exist if the parcels were owned and used as separate properties. But Mr. Friskney owns and uses the parcels largely as one property. More importantly, he offered no probative market-based evidence to rebut the presumption that the properties' current assessments are accurate. The Board therefore denies his claims

Procedural History

2. Michael Friskney filed written requests asking that the assessments for three of his properties be reduced. On September 6, 2007, the Noble County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying Mr. Friskney's requests. On October 8, 2007, Mr. Friskney filed three Form 131 petitions asking the Board to review the PTABOA's determinations. The Board has jurisdiction over Mr. Friskney's appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

3. On August 21, 2008, the Board's designated Administrative Law Judge, Patti Kindler, held a hearing on Mr. Friskney's appeals. Neither she nor the Board inspected Mr. Friskney's properties.

4. The following people were sworn and presented testimony at the hearing:

   Michael Friskney

   For the Noble County Assessor:

   Kim Gephart, Noble County Assessor
   David Button PTABOA member
   George Clifford, PTABOA member[1]

[1] Mary Beth Lemmings, a PTABOA member, signed the hearing sign-in sheet but left before the hearing started.

5. Mr. Friskney offered the following exhibits, which the ALJ admitted into evidence:

Petitioner Exhibit 1 – Aerial map and "beacon™" property data for parcel 57-04-16-100-186.000-011,
Petitioner Exhibit 2 – "Beacon™" property data for comparable parcel 57-04-15-100-108.000-010, located at 1490 Northshore Drive,
Petitioner Exhibit 3 – Aerial map, property record card and "beacon™" data for parcel 57-04-19-100-202.000-011,
Petitioner Exhibit 4 – Aerial map and "beacon ™" property data for parcel 57-04-16-100-204.000-011.

6. The Assessor offered the following exhibits, which were admitted into evidence:

Respondent Exhibits 1-2 – Exhibit list for August 21, 2008 hearing,[2]
Respondent Exhibit 3 - Property record cards for five of Mr. Friskney's parcels,
Respondent Exhibit 4 – Aerial map of Mr. Friskney's neighborhood,
Respondent Exhibit 5 –Minutes of PTABOA hearing,
Respondent Exhibit 6 –July 24, 2007 letter from Leigh A. Pranger to Kim Gephart,
Respondent Exhibit 7 –Aerial map of properties,
Respondent Exhibit 8 –Listing information for five comparable properties in Willow Bend subdivision,
Respondent Exhibit 9 –August 11, 2008, letter from Leigh A. Pranger to Kim Gephart.

7. The Board recognized the following additional items as part of the record of proceedings:

Board Exhibit A –Form 131 petition with attachments,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Request for continuance,
Board Exhibit E – Board's letter granting continuance.

8. Mr. Friskney owns a number of parcels near Sylvan Lake in Rome City, Indiana. The properties under appeal are two vacant parcels and a parcel improved with a garage and lean-to. Parcel 57-04-16-100-186.000-011 ("Parcel 186") is located on the northwest corner of Lions Drive and Wildwood Avenue and includes the garage and lean-to. Parcel 57-04-19-100-202.000-011 ("Parcel 202") is located across the street on the northeast

[2] Although it consists of only one page, Ms. Gephart identified this document as two separate exhibits. The document itself identifies a list of "PTABOA members attending" as Exhibits 1 and 2. At the hearing, Mr. Gephart referred to the list of PTABOA members as Exhibit 1 and the remainder of the document presumably as Exhibit 2. The ALJ therefore marked the document as "Respondent Exhibit 1 & 2."

corner of Wildwood Avenue and Lions Drive. Parcel 57-04-16-100-204.000-011 ("Parcel 204") is a rear lot located behind Parcel 202.

9. The PTABOA listed the following values for Mr. Friskney's properties:

Parcel 186	Land: $35,400	Improvements: $5,800	Total: $41,200.
Parcel 202	Land: $5,900	Improvements: $0	Total: $5,900
Parcel 204	Land: $10,300	Improvements: $0	Total: $10,300.

10. Mr. Friskney contends that the land assessments should be $14,000 for Parcel 186 and $3,000 each for both Parcels 202 and 204. He agrees with the improvement assessment for Parcel 186.

Administrative Review and the Petitioner's Burden

11. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving 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).

12. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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").

13. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to impeach or rebut 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.

ANALYSIS

Summary of Parties' Contentions

A. Mr. Friskney's contentions

14. According to Rome City's zoning ordinance, two of the three parcels under appeal are too small to build on. *Friskney testimony; Pet'r Exs. 3-4*. Neither a principle nor an accessory structure could be built on Parcel 202, and a variance would be required to build an accessory structure on Parcel 204. *Resp't Ex. 6.* Although that may not be true if parcels 202 and 204 were combined, Mr. Friskney does not intend to do that. In fact, he recently razed buildings that were on those parcels. *Friskney testimony*. Also, the parcels are assessed separately and he could sell them separately. Their assessments should therefore reflect that they cannot be built on. *Friskney argument*.

15. Parcel 202 is only 620 square feet, yet Mr. Friskney paid $100.70 in taxes on it. That amounts $1.62 per square foot.[3] *Friskney testimony; Pet'r Ex. 3.* A tenant could rent buildings in cities like Kendallville, Rome City, or Wolcottville for that price. The owner of a comparable 0.088-acre parcel located at 1490 Northshore Drive pays only $9.96 per year in property tax. *Friskney testimony; Pet'r Ex. 2.*

16. The Assessor actually lowered Parcel 204's assessment from $10,300 in 2006 to $9,300 in 2007. *See Pet'r Ex. 4*. That fact alone shows that the 2006 assessment was too high. *Friskney argument.* Also, Parcel 204 is landlocked—its only street access is through other parcels that Mr. Friskney owns. Thus, it would not have any value to anyone else.

[3] It is not clear whether Mr. Friskney's calculation is correct. Parcel 202's property record card lists the lot's dimensions as 31' x 20' and 31' feet by 50', indicating that the parcel may include two previously separate parcels that have been combined. *See Resp't Exs. 3, 9*. And the aerial photographs in which Mr. Friskney outlined Parcel 202 support the inference that what the parties refer to as Parcel 202 previously had been parcels 57-04-16-100.202.000-0011 and 57-04-16-100.203.000-0011. *See also, Resp't Ex. 9* (referring to those two parcels together in addressing whether structures could be built on them). Thus, it appears that Parcel 202 has 2,170 square feet, not 620 square feet as Mr. Friskney testified.

17. All three parcels are over-assessed compared to other properties in rural Wolcottville. Vacant parcels located less than two miles away are available for $10,000 to $12,000 per lot. Parcel 202 and Parcel 204 each is less than a quarter of the size of a regular lot. If a standard full sized lot is worth $10,000 to $12,000, each of those parcels should be worth only $2,000 to $3,000.

18. The Assessor lowered Parcel 186's assessment from $41,200 in 2006 to $27,200 in 2007. Once again that fact shows that the property's 2006 assessment was too high.

19. Finally, Mr. Friskney contends that Indiana's assessment and taxation system is too complex for taxpayers and assessors to understand. Over the years, the Assessor has had to correct several assessment errors on Mr. Friskney's properties.

B. The Assessor's contentions

20. Parcel 186 sits across the street from Mr. Friskney's home. And Parcels 202 and 204 abut that residential parcel. All four parcels—the three parcels under appeal and Mr. Friskney's home—should be valued as one property. In that light, Parcels 2002 and 2004 are not separate unbuildable lots. For the same reason, Parcel 204 is not landlocked. *Gephart argument*.

21. Even if the three parcels are viewed independently from Mr. Friskney's home, they are buildable. According an August 11, 2008, letter from the Rome City Town Manager, Parcel 186 is suitable for a dwelling and Parcel 204 is large enough for a shed. *Gephart testimony*; *Resp't Ex. 9*. And in a July 24, 2007, letter, the town manager said that Mr. Friskney can build a structure on Parcel 204 if he gets a variance. *Id.; Resp't Ex. 6*.

22. The fact that the properties' assessments decreased from 2006 to 2007 is beside the point. Those assessments were based on sales from different years, and market values decreased between the two assessment periods. *Gephart testimony.*

23. Finally, the lot on Northshore Drive is not comparable to Mr. Friskney's properties. It is located in a different neighborhood across Sylvan Lake. And it is assessed on a metes-and-bounds basis while Mr. Friskney's properties are assessed on a front-foot basis. *Gephart testimony*.

Discussion

24. 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.

25. 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 will suffice. *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.

26. Mr. Friskney focused primarily on limitations posed by the size and location of Parcels 202 and 204. But those limitations stem from the parcels being viewed independently of each other. As the Assessor rightly argued, Mr. Friskney owns both those contiguous lots and does not use them as if they were separate properties. When combined, they are

large enough for a garage to be built. *Resp't Ex. 9*. And Parcel 204 is not landlocked; it can be accessed from the street via Mr. Friskney's other parcels.

27. Even if the two parcels were restricted in the manner Mr. Friskney claims, those restrictions, by themselves, would not suffice to rebut the presumption of accuracy afforded to their assessments. Mr. Friskney instead needed to offer market-based evidence to show the market value-in-use of his properties.

28. He offered little such evidence. At most, Mr. Friskney claimed that "full sized" rural lots sold for between $10,000 and $12,000. In doing so, he correctly recognized that one can estimate a property's market value by comparing it to similar properties that have sold in the marketplace. *See* MANUAL at 13-14. That is precisely the theory behind the sales-comparison approach to value. *Id.* But Mr. Friskney did not follow the sales-comparison approach's basic requirements.

29. The sales-comparison approach assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property already existing in the market place. *Id.* A person applying the sales-comparison approach must first identify comparable properties that have sold. *Id.* He then "considers and compares all possible differences between the comparable properties and the subject property that could affect value," using objectively verifiable evidence to determine which items actually affect value in the marketplace. *Id.* The contributory value of those items are then quantified and used to adjust the sale prices of comparable properties. *Id.*

30. Thus, in order to use a sales-comparison analysis as evidence in an assessment appeal, the party offering that analysis must show that the properties upon which it is based are comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the party must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, he

must explain how any differences between the properties affect their relative market values-in-use. *Id.*

30. Mr. Friskney did none of those things. He did not identify any specific comparable property, referring only generally to "full-sized" rural lots. And he did not compare the characteristics of those lots to the characteristics of the properties under appeal, other than to assert that the rural lots were about four times the size of Parcels 202 and 204.

31. Mr. Friskney also compared his properties' assessments to the assessment of a property on Northshore Drive.[4] Once again, he did not meaningfully compare the characteristics of that property to those of the properties under appeal. Also, looking to comparable properties' *assessments* rather than to their *sale prices* does little to show a given property's market value-in-use. True, under the Guidelines' mass-appraisal version of the cost approach, land assessments are indirectly based on sale prices for other properties in the area. *See generally* GUIDELINES, ch. 2 (describing procedures for valuing land). Using those assessments as substitutes for sale prices, however, means estimating a property's value based on *estimates* of other properties' values, and mass-appraisal estimates at that. The Board doubts that such an attenuated approach complies with generally accepted appraisal principles. And Mr. Friskney did nothing to allay that doubt.

32. Mr. Friskney also argued that decreases in his properties' assessments from 2006 to 2007 show that the 2006 assessments were too high. That argument misunderstands how Indiana's assessment system works. Each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs,* 699 N.E.2d 800, 805 n.14 (Ind. Tax Ct. 1998). Indeed, beginning with the 2006 assessment, values are adjusted each year to reflect changes in the market. Thus, a property's 2006 assessment reflects its value as of January 1, 2005, while its 2007 assessment reflects its value as of January 1, 2006. IND. ADMIN. CODE tit. 50, r. 21-3-3.

[4] Mr. Friskney actually focused on the taxes connected to the two properties. Because the Board lacks jurisdiction to address the propriety of local taxes, we assume that Mr. Friskney used the differences in taxes as a proxy for differences in assessments. Indeed, the Northshore Drive property was assessed for only $600—substantially less than the assessments for any of Mr. Friskney's properties. *Pet'r Ex. 2*.

The fact that Mr. Friskney's assessments decreased from 2006 to 2007 therefore does nothing to show that the properties' 2006 assessments were wrong.

33. Finally, Mr. Friskney argued that Indiana's assessment system is too complex. Even if that were the case, it would not help Mr. Friskney's appeals. The Board must follow all applicable statutes and regulations regardless of its thoughts about their relative merits. Also, whatever the complexities of the mass-appraisal guidelines for assessing properties throughout a jurisdiction, a taxpayer's burden on appeal is straightforward. If the taxpayer believes that his property's assessment does not accurately reflect its market value-in-use, he can offer market-based evidence to show what the property's value really is.

SUMMARY OF FINAL DETERMINATION

34. Mr. Friskney failed to make a prima facie that any of the assessments under appeal are wrong. The Board therefore finds for the Assessor.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date written above.

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Commissioner, 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>