

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

Petition: 20-019-02-1-5-00038
Petitioners: Curtis & Cynthia Hollinger
Respondent: Jefferson Township Assessor (Elkhart County)
Parcel: 20-07-27-104-006.000-019
Assessment Year: 2002

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Elkhart County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated July 2, 2003.
2. Notice of the decision of the PTABOA was mailed on March 24, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on April 23, 2004. The Petitioners elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 29, 2005.
5. The Board held an administrative hearing on November 17, 2005, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons present and sworn as witnesses at hearing:
 - a) For Petitioners- James Hollinger, father, POA,¹
 - b) For Respondent- R. Eugene Inbody, Elkhart County Assessor,
Cathy S. Searcy, clerk, Elkhart County PTABOA clerk.²

¹ A General Power of Attorney from each owner purported to authorize James Hollinger to present this case. This authorization, however, does not conform to the Board's rules for representation. *See* 52 IAC 1-2-1 and 52 IAC 2-2-16. Nevertheless, there was no objection to allowing the case to proceed. Therefore, the Board will decide the case on the merits and not on procedural grounds.

² Susan Toumey of the Jefferson Township Assessor's office was present at the hearing. She was not sworn to testify.

Facts

7. The subject property is a vacant residential lot on Lower Drive in Goshen.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed value determined by the PTABOA is \$16,600.
10. The assessed value requested by Petitioners is \$5,000.

Issue

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a) The subject property, along with four contiguous parcels, was used to support and maintain a single residential property with a house and barn. *Hollinger testimony*. The subject property is overvalued as a potential building lot and should be valued based on its actual use as excess residential land. *Hollinger testimony*.
 - b) The 2002 assessment should consider the actual use of the subject property as of January 1, 1999. *Hollinger testimony*. The subject property was used as a buffer for the parcel containing the house. It was not used as a potential building site. *Hollinger testimony; Petitioner Exhibit 9*.
 - c) An appraisal established a market value of \$153,000 for three of the contiguous parcels: one parcel with a house, one parcel with a barn, and one parcel of vacant, unimproved land as of October 16, 2000. *Hollinger testimony; Petitioner Exhibit 5*. Another appraisal established a market value of \$165,000 for the subject property and the four contiguous parcels as of September 10, 2002. *Hollinger testimony; Petitioner Exhibit 4*. Based on conversations with knowledgeable individuals in the area, the subject property’s assessed value as of January 1, 1999, should be approximately two percent less than the value reported on the 2000 appraisal and approximately five percent less than the 2002 appraisal. *Hollinger testimony; Petitioner Exhibit 11*.
 - d) The October 2000 appraisal reflects land value adjustments for the difference in land size between the property subject to the appraisal and the comparable properties. *Hollinger testimony; Petitioner Exhibit 5*. The adjustment for Comparable #5 is \$10,000 for 0.67 acres of land and the adjustment for Comparable #4 is \$15,000 for 3.16 acres of land. *Hollinger testimony; Petitioner Exhibit 5*. The September 2002 appraisal uses a \$3,000 adjustment to Comparable #3 for 0.52 acres. *Hollinger testimony; Petitioner Exhibit 4*.
 - e) As a result of the PTABOA recommendation to combine the subject property with the contiguous parcels, the total assessment for the subject property and the two contiguous lots is \$5,000 for the assessment as of March 1, 2004. *Hollinger*

testimony; Petitioner Exhibit 10. The valuation of the land should approximate the \$5,000 value established after combining of the three platted lots in 2004, and the value established by both appraisal reports. *Hollinger testimony.* The 2004 assessment of \$5,000 for the three residential vacant platted lots combined is more in the “ballpark” of the values in the appraisals. *Hollinger testimony.*

12. Summary of Respondent’s contentions in support of the assessment:

- a) There was no supporting documentation showing how the land adjustments utilized in the 2002 appraisal were determined. *Searcy testimony.* The 2002 appraisal was performed as if the property being valued were all one site with an overall acreage, but those properties actually are assessed as two separate small acreage plats and three platted subdivision lots. *Searcy testimony; Respondent Exhibit 1.* The adjustments to the land values of the comparables in the appraisals were ambiguous and unsupported. *Searcy testimony.*
- b) The subject lot is a platted residential lot located in the Jefferson Place Subdivision. It is properly priced by front footage in accordance with the land commission’s directives as shown on the land order documents. *Respondent Exhibit 1, 3.* There is no indication that the subject property is unbuildable or cannot be sold as a single building lot, so it is valued using the same method as other vacant lots located in the subdivision. *Inbody testimony.*
- c) The sales disclosures from the subdivision support the current land assessment and represent the criteria used by the land commission to set the assessment of platted lots therein. *Searcy testimony; Respondent Exhibit 4, 5.*

Record

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

- a) The Petition,
- b) The digital recording of the hearing,
- c) Exhibits:
 - Petitioner Exhibit 1 – Form 11 notices for five parcels labeled 1(a) to 1(e),
 - Petitioner Exhibit 2 – Form 130 petitions for five parcels labeled 2(a) to 2 (e) along with the request for the parcels to be heard together,
 - Petitioner Exhibit 3 – Request for additional evidence and the response,
 - Petitioner Exhibit 4 – Certified appraisal for the subject property and four contiguous parcels,
 - Petitioner Exhibit 5 – Certified appraisal of a contiguous parcel,
 - Petitioner Exhibit 6 – Form 113,
 - Petitioner Exhibit 7 – Form 115 determinations for the subject property and four contiguous parcels,

Petitioner Exhibit 8 – Form 17T claims,
Petitioner Exhibit 9 – Form 131 appeal petitions for the subject property and four contiguous parcels and request for a consolidated hearing,
Petitioner Exhibit 10 – Form 11 showing \$5,000 assessment for three contiguous parcels after combining those as a single parcel,
Petitioner Exhibit 11 – Summary of contentions,
Respondent Exhibit 1 – Two aerial maps showing the subject property and Jefferson Place subdivision,
Respondent Exhibit 2 – Sales ratio study for subject neighborhood,
Respondent Exhibit 3 – Land Order for Jefferson Place Subdivision,
Respondent Exhibit 4 – Sales disclosure form for lot located in Jefferson Place Subdivision,
Respondent Exhibit 5 – Sales disclosure form for vacant lot located in Jefferson Place Subdivision,
Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
- b) 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. 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”).

15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners maintain that the subject property is excessively assessed based on the actual use of the subject property, the 2004 assessed value for it, and the land values established by the appraisals they submitted. *Hollinger testimony; Petitioner Exhibit 4, 5*. The Petitioners claim that, because the assessed value should be based on actual use on the assessment date, the assessment should reflect the actual use as part of a larger residential home site, rather than potential use as a separate building site. *Hollinger testimony*.

- b) The Petitioners are correct that the assessment of the subject property must be based on its current value-in-use on the assessment date and not on some potential higher use. 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). This point alone, however, does not make their case.
 - c) The Petitioners argue that the 2004 assessment of \$5,000 for three contiguous parcels after the parcels were combined into a single parcel of land shows the current assessment of \$21,600 for the subject property is excessive and should be similar to the more recent \$5,000 assessment. *Hollinger testimony; Petitioner Exhibit 10*.
 - d) The 2004 land assessment is not probative evidence that the 2002 assessment was incorrect or that assessments for 2002 and 2004 should be the same because each tax year is separate and distinct. *See Barth v. State Bd. of Tax Comm'rs*, 699N.E.2d 800, 806 (Ind. Tax Ct. 1998).
 - e) The Petitioners offered two certified appraisals. *Petitioner Exhibit 4, 5*.
 - f) One appraisal estimated market value of \$153,000 as of October 16, 2000, for one parcel, 09-07-27-102-012.
 - g) The other appraisal estimates market value of \$165,000 as of September 10, 2002. This appraisal purportedly includes five parcels of land, a house, and a barn. The appraisal does not allocate value that is attributable to the various parcels on an individual basis. Without such a breakdown, it is not possible to determine how much value is attributable to the subject property.
 - h) The appraisals and the balance of the evidence fail to establish values that can be attributed to the subject parcel. The evidence does not prove what the assessment for the subject property should be.
 - i) The valuation date for the 2002 assessment year is January 1, 1999. Therefore, the Petitioners were required to relate the appraisals to that valuation date for such evidence to have probative value. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners offered testimony that according to conversations with knowledgeable people, the value on January 1, 1999, should be approximately five percent less than the 2002 appraisal value and two and a half percent less than the 2000 appraisal value. *Hollinger testimony; Petitioner Exhibit 11*. That testimony, however, is conclusory and has no probative value.
16. Where the Petitioner has not supported the claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trial_proc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.