

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

Petitions: 20-019-02-1-5-00039
20-019-02-1-5-00040
20-019-02-1-5-00041
Petitioners: James & Judianne Hollinger
Respondent: Jefferson Township Assessor (Elkhart County)
Parcels: 20-07-27-104-003.000-019
20-07-27-102-013.000-019
20-07-27-102-012.000-019
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 appealed 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 the hearing:
 - a) For Petitioners – James Hollinger, property owner,
 - b) For Respondent – R. Eugene Inbody, Elkhart County Assessor,
Cathy S. Searcy, Elkhart County PTABOA clerk¹.

¹ Susan Toumey of the Jefferson Township Assessor’s office was present at the hearing. She was not sworn to testify.

Facts

7. The subject properties are three contiguous lots located at 59147 Lower Drive and Timber Trail in Goshen. Parcel #20-07-102-012.000-019 contains a dwelling and has 0.38 acres. Parcel #20-07-27-102-013.000-019 contains a barn and has 0.37 acres. Parcel #20-07-27-104-003.000-019 is a vacant, unimproved lot.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The assessed values as determined by the Elkhart County PTABOA:
- | | | |
|----------------------------------|------------------------|------------------|
| Parcel #20-07-27-102-012.000-019 | | |
| Land \$21,100 | Improvements \$175,500 | Total \$196,600, |
| Parcel #20-07-27-102-013.000-019 | | |
| Land \$16,100 | Improvements \$10,600 | Total \$26,700, |
| Parcel #20-07-27-104-003.000-019 | | |
| Land \$16,200 | Improvements \$0 | Total \$16,200. |
10. The assessed values requested by Petitioners:
- | | | |
|----------------------------------|------------------------|------------------|
| Parcel #20-07-27-102-012.000-019 | | |
| Land \$11,000 | Improvements \$143,000 | Total \$154,000, |
| Parcel #20-07-27-102-013.000-019 | | |
| Land \$5,000 | Improvements \$7,500 | Total \$12,500, |
| Parcel #20-07-27-104-003.000-019 | | |
| Land \$5,000 | Improvements \$0 | Total \$5,000. |

Issue

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
- a) The subject properties consist of three residential lots. There is a lot with a house, a lot with a barn, and a vacant unimproved lot. These properties, along with two other contiguous parcels, were used to support and maintain a single residential property. *Hollinger testimony*. The assessed values of the subject properties and the additional lots are geared toward potential use, rather than the current use as one residential property. *Hollinger testimony*. The subject properties have always been one residential property, a fact that should be recognized in the value-in-use assessment. *Hollinger testimony; Petitioner Exhibit 11*.
 - b) The 2002 assessment should consider the actual use of the subject properties as of January 1, 1999. *Hollinger testimony*. The other properties were used as a buffer for the parcel containing the house. They were not used as potential building sites. *Hollinger testimony; Petitioner Exhibit 9*.
 - c) An appraisal established a market value of \$153,000 for the subject properties as of October 16, 2000. *Hollinger testimony; Petitioner Exhibit 5*. Another appraisal established a market value of \$165,000 for the subject properties and the

other two contiguous parcels as of September 10, 2002. *Hollinger testimony; Petitioner Exhibit 4.* Based on conversations with knowledgeable individuals in the area, the subject properties' 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 subject property and the comparable properties. *Hollinger testimony; Petitioner Exhibit 5.* The adjustment for Comparable #5 is \$10,000 for 0.67 acres and the adjustment for Comparable #4 is \$15,000 for 3.16 acres. *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 properties with the contiguous parcels, the total assessment for the vacant residential lot and the 2 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 appraisals. *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.*
- f) The appraisals were performed by separate appraisal firms and both of them included an interior inspection of the property, photographs of the subject and comparables. They reach similar conclusions about valuation. That similarity supports testimony that the assessment is excessive by nearly \$100,000. *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 appraisal were ambiguous and unsupported. *Searcy testimony.*
- b) The subject property consists of platted residential lots located in the Jefferson Place Subdivision. They are 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 properties are unbuildable or cannot be sold as single building lots, so they are 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 assessments and represent the criteria used by the land commission to set the assessments 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 for each parcel,
- 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 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 them 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 for each parcel,
 - 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 properties are excessively assessed based on the actual use of the subject properties, the 2004 assessed value for them, 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 disputed assessment should reflect the actual use as a 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 (the vacant unimproved lot in this appeal and two other vacant lots that were combined into a single parcel) shows the current land assessments are excessive and they 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 a market value of \$165,000 as of September 10, 2002. This appraisal purportedly includes the subject properties and two contiguous parcels. 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 properties in this appeal.
 - h) The appraisals and the balance of the evidence fail to establish values that can be attributed to each of the subject parcels or to the subject parcels collectively. Therefore, they lack probative value for this case.
 - 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*. The Petitioners' statement, however, is conclusory and has no probative value.
16. Where the Petitioner failed to support 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>.