

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

Petitioners: Frederick P. & Judy L. Geyer
Respondent: Columbia Township Assessor (Whitley County)
Petitions: 92-003-02-1-5-00002
92-003-02-1-5-00003
92-004-02-1-5-00012
92-004-02-1-5-00013
Parcels: 020-070-00003151
020-070-00003150
021-070-00004490
021-070-00004480
Assessment Year: 2002

The Indiana Board of Tax Review ("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 Whitley County Property Tax Assessment Board of Appeals ("PTABOA") by written document dated October 4, 2003.
2. The PTABOA mailed notice of its decision to Petitioners on January 7, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on January 26, 2004. The Petitioners elected to have this case heard according to small claim procedures.
4. The Board issued a notice of hearing to the parties dated January 12, 2006.
5. Administrative Law Judge Patti Kindler held the administrative hearing in Columbia City on March 7, 2006.
6. Persons present and sworn as witnesses at the hearing:
 - a) For Petitioners – Frederick P. Geyer, property owner,
 - b) For Respondent – William Schultz, Columbia Township Representative,
Marilyn Hively, Columbia Township Assessor.

Facts

7. The properties under appeal are used as a single-family residence occupied by the Petitioners and two rental homes. Parcel 020-070-00003151 (“Parcel 3151”) has the Petitioners' home and a rental home on 10.14 acres. Parcel 020-070-00003150 (“Parcel 3150”) has a mobile home on 5.126 acres. Parcels 021-070-00004480 and 021-070-00004490 (“Parcels 4480 & 4490”) have a total of 1.14 acres of vacant land with a driveway that provides access to those homes.

8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.

9. The assessed values as determined by the PTABOA are listed below.

<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
020-070-00003151	\$30,000	\$158,700	\$188,700
020-070-00003150	\$12,100	\$17,100	\$29,200
021-070-00004480	\$800	\$0	\$800
021-070-00004490	\$400	\$0	\$400

10. The assessed values requested by the Petitioners are listed below.

<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
020-070-00003151	\$30,000	\$133,500	\$163,500
020-070-00003150	\$14,000	\$11,000	\$25,000
021-070-00004480	\$2,500	\$0	\$2,500
021-070-00004490	\$1,000	\$0	\$1,000

Issues

11. Summary of Petitioners’ contentions in support of alleged error in assessment:

- a) Mr. Geyer is a certified licensed appraiser specializing in rural property. *Geyer testimony.*
- b) The value of the subject properties is influenced by the neighborhood and the neighborhood zoning. *Geyer testimony.* The aerial map shows that the subject properties have a single-family residential use, but a commercial mobile home park and several apartment complexes surround them and negatively influence the market value as residential properties. *Geyer testimony; Petitioner Exhibit E.*
- c) The secondary dwelling located on Parcel 3151 was originally used as a canine parlor. Subsequently, it was converted into a secondary living unit. *Geyer testimony.* Based upon appraisal experience and conversation with buyers of properties with secondary dwellings, secondary dwellings have very little, if any, value because most purchasers do not want secondary dwellings or the headaches of managing rental properties. *Geyer testimony.*

- d) The property record cards ("PRCs") for three properties offered as Respondent's comparables have both primary and secondary dwellings. Although the secondary dwellings were assessed, they show that the owners reported little or no value attributable to those secondary dwellings and the secondary dwelling had little or no influence on the decision to buy the property. *Geyer testimony*. In addition, the appraisals for two of the comparables did not assign any value for the secondary dwellings, which shows that secondary dwellings have little to no value in the marketplace as a part of the larger residential property. *Geyer testimony*.
- e) The PRC submitted for the Swingley property shows a parcel with both a primary and secondary dwelling that sold for \$142,000 in 2004. *Petitioner Exhibit B*. The buyer of the Swingley property, as well as the buyers of the Sollazzo property and the Lane property, stated that the secondary dwellings did not influence their decision to purchase the properties. *Geyer testimony*. The Wyman PRC shows at one time that property included a mobile home as a secondary dwelling, but it was removed prior to the reassessment. This fact is another indication that the market place has no use for a second dwelling and such an improvement does not increase the overall value of a property. *Geyer testimony; Petitioner Exhibit C*.
- f) The mobile home is on a landlocked parcel and could not be sold off separately. *Geyer testimony; Petitioner Exhibit E*. The mobile home structure is assessed at \$17,100, but it should be no more than \$11,000. *Geyer testimony*. With the land included, the mobile home is assessed at \$29,200, which is well above the price for comparable mobile homes. It would be more appropriately assessed at a value of \$25,000. *Geyer testimony; Petitioner Exhibit A*.
- g) The present combined assessment of \$219,100 for the subject properties does not reflect real market value. The subject properties could only be sold as a single unit rather than four separate parcels because the sole access to the properties is the long stone driveway located on two of the parcels. *Geyer testimony; Petitioner Exhibit A*.
- h) The township assessed each parcel individually, but should have assessed them as one unit because they are landlocked and cannot be sold individually. *Geyer testimony; Petitioner Exhibit A*. The overall assessment for the subject properties should be \$192,000. *Id.* Although the Form 131 Petition stated that the subject properties would be sold for \$205,000, that value should not be construed as the requested value. *Geyer testimony*.

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

- a) The Respondent did not offer evidence regarding the effect the surrounding neighborhood has on the subject properties.

- b) In accordance with state assessment guidelines, secondary dwellings must be valued based on their market value-in-use. *Schultz testimony*. The PRCs submitted by the Petitioners show that other secondary dwellings throughout the county have been valued in the same manner as the subject secondary dwelling. *Respondent Exhibit A2, A3, A4*.
- c) The value of the secondary dwelling on Parcel 3151 is less than the secondary dwellings listed on the PRCs discussed and submitted as comparables by the Petitioners. *Schultz testimony*. The secondary dwelling on Parcel 3151 is a 978 square foot concrete block dwelling valued at \$25,300 (\$25.87 per square foot). *Respondent Exhibit A1 at 5*. The 600 square foot secondary dwelling on the Sollarzzo PRC is valued at \$30,400 (\$50.67 per square foot). *Respondent Exhibit A2*. The Lane PRC shows a 720 square foot secondary dwelling valued at \$30,700 (\$42.64 per square foot). *Respondent Exhibit A3*. The secondary home on Parcel 3151 is larger than the two comparables and has more acreage attributed to it, but its assessment is less than the comparable secondary properties. *Schultz testimony*.
- d) The Petitioners' comparable mobile home sales are only sales in a mobile home court, while the mobile home on Parcel 3150 is a rural mobile home site with 5.12 acres. *Schultz testimony*. The PRCs for the sale of six rural properties with mobile homes support the \$29,200 assessment established for Parcel 3150. *Respondent Exhibit B2, B3, B4, B5, B6, B7*. One of the sales is for a mobile home on 1.5 acres that sold for \$30,000 in 2002 and another is a 1999 sale of a 16 foot by 80 foot 2000 model mobile home on 10.34 acres for \$39,000. *Respondent Exhibit B6, B7*. Both comparables show that rural mobile home properties are selling for between \$30,000 and \$39,000. *Schultz testimony*.
- e) The mobile home on Parcel 3050 is used as a rental property and generates a monthly income of \$475. That fact adds value to the overall property value in the marketplace even though it is only accessible from the driveway for the primary dwelling. *Schultz testimony; Respondent Exhibit B8*. Parcel 3150 must be viewed and priced individually because it is a separate parcel from the primary residence and could be sold with an easement to provide access. *Id.*
- f) The 5.12 acres of land attributable to Parcel 3150 has been assessed for \$9,000 as a home site with the remaining land assessed using the agricultural base rate of \$880 an acre. *Respondent Exhibit B1 at 6*. The Neighborhood Land Summary shows the average price per acre for land sales in the township is from \$2,000 to \$28,000 an acre. If anything, the land for Parcel 3150 is undervalued. *Schultz testimony; Respondent Exhibit B9*.
- g) The subject properties could be combined into a single parcel, which would result in a lower overall value. *Schultz testimony*. Parcels 4480 and 4490 constitute the driveway. They already have been combined by the auditor. *Respondent Exhibit*

CI at 3. Parcel 3150 and Parcel 3151 cannot be combined into a single parcel because they are located in separate sections and taxing units. *Hively testimony.*

- h) The PRC for the Sollazzo property shows that its sale price (\$187,000) is less than the combined assessments for the subject properties (\$219,100). *Schultz testimony; Respondent Exhibit A2.* The Sollazzo acreage is less than half that of the subject properties and the Sollazzo's primary dwelling is substantially smaller than that of the subject properties. *Id.* The comparable PRCs are not sufficient to show the subject properties are valued excessively because no adjustments were made to those comparables to account for the differences between them and the subject properties. *Schultz testimony.*

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 A – Summary,
 - Petitioner Exhibit B – PRC for the Swingley property,
 - Petitioner Exhibit C – PRC for the Wyman property,
 - Petitioner Exhibit D – Data sheet for mobile home sales,
 - Petitioner Exhibit E – Aerial map with the subject properties highlighted,
 - Respondent Exhibit A1 – Notice of Hearing, Form 130, and PRC for Petition 92-003-02-1-5-00002,
 - Respondent Exhibit A2 – PRC for the Sollazzo property,
 - Respondent Exhibit A3 – PRC for the Lane property,
 - Respondent Exhibit A4 – PRC for the Pancake property,
 - Respondent Exhibit A5 – PRC for the Newbauer property,
 - Respondent Exhibit A6 – PRC for the Klemm property,
 - Respondent Exhibit A7 – Neighborhood Valuation Form and Summary for land values with attached vacant land sales,
 - Respondent Exhibit A8 – Determination of the PTABOA, Form 115,
 - Respondent Exhibit B1 – Notice of Hearing, Form 130, and PRC for Petition 92-003-02-1-5-00003,
 - Respondent Exhibit B2 – PRC for parcel 92-06-29-000-304.000-003 (Crowell mobile home),
 - Respondent Exhibit B3 – PRC for parcel 92-06-13-000-408.000-003 (Spencer mobile home),
 - Respondent Exhibit B4 – PRC for parcel 92-06-25-000-104.000-003 (Chester mobile home),
 - Respondent Exhibit B5 – PRC for parcel 92-06-47-000-203.0000-003 (Ross mobile home),

Respondent Exhibit B6 – PRC for parcel 92-04-22-000-204.000-009 (Rapp mobile home),
Respondent Exhibit B7 – PRC for parcel 92-04-29-000-205.000-009 (Wildoner mobile home),
Respondent Exhibit B8 – Aerial map of the subject property,
Respondent Exhibit B9 – Neighborhood Valuation Form and Summary for Land Values with attached vacant land sales,
Respondent Exhibit B10 – Determination of the PTABOA, Form 115,
Respondent Exhibit C1 – Notices of Hearing and Forms 130 for Petitions 92-004-02-1-5-00012 and 92-004-02-1-5-00013 with "combined" parcels form and PRC for parcel 021-070-00004490,
Respondent Exhibit C2 – Aerial map of the subject property,
Respondent Exhibit C3 – Neighborhood Valuation Form and Summary for Land Values with attached vacant land sales,
Respondent Exhibit C4 – Determination of the PTABOA, Form 115,
Board Exhibit A – Form 131 with attachments for each parcel,
Board Exhibit B – Notice of hearing for each parcel,
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”).
- c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners failed to establish a prima facie case. The Board reached this conclusion for the reasons that follow.

Negative Influence of the Surrounding Neighborhood

- a) The Petitioners submitted an aerial map showing several large multi-unit apartment buildings located parallel to their private driveway, and a large mobile home park located southwest of the subject parcels. *Petitioner Exhibit E*. The Petitioners claim that further expansion for more multi-unit structures to be constructed in the immediate neighborhood is likely. *Geyer testimony; Petitioner Exhibit E*. The submission of an aerial map and a discussion about commercial properties in the area are insufficient to establish a relationship between the neighborhood and market value-in-use.
- b) The record does not support the claims that the current assessment is excessive because of close proximity to a mobile home park and multi-unit apartment buildings. While there is no doubt that some of the neighboring properties are used for multi-residential and commercial purposes, the Petitioners did not submit probative evidence that neighboring properties lower the market value-in-use of the subject properties. The record lacks probative evidence that the subject parcels are influenced positively or negatively by the surrounding commercial properties. The record does not establish that the location was not already properly considered.
- c) Conclusory statements do not prove that the surrounding neighborhood has a negative affect on the value of the subject properties. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d) The Petitioners did not present probative evidence that the subject parcels were atypical for the neighborhood or that the commercial properties lower the value-in-use of the subject parcels. The burden never shifted to the Respondent to rebut the Petitioners' evidence on this point.

Market Value of the Secondary Dwelling

- e) The Petitioners pointed to several PRCs with primary and secondary dwellings to show that secondary dwellings have little or no value. *Petitioner Exhibit B; Respondent Exhibit A2, A3, A4*. According to Petitioners, some purchasers of properties with secondary dwellings indicated that a secondary dwelling did not influence their decision to purchase the property and some of appraisers did not include a value attributable to such dwellings. *Geyer testimony*.
- f) The Petitioners failed to make a comparison between the secondary dwellings on the purported comparable PRCs and the assessed value of their secondary dwelling to establish that their assessed value is excessive. The statements that

appraisers do not contribute any value to secondary dwellings for loan purposes are not supported by the submission of any appraisal documentation or testimony of other appraisers. They remain only unsupported conclusions that lack evidentiary weight.

- g) In order to use a comparison approach as evidence, the proponent must establish the comparability of the properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of comparability. A party seeking to rely on a comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties as well as how any differences between the properties affect the relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- h) The Petitioners did not establish comparability between their secondary dwelling on Parcel 3151 and the secondary dwellings offered as comparables. Therefore, the evidence relating to those properties does not prove anything significant in this case.
- i) The Petitioners failed to make a prima facie case that the secondary dwelling on their property has no value. Similarly, if the market value-in-use is something less than the current assessment, the Petitioners failed to provide probative evidence of what that value should be. Therefore, the burden never shifted to the Respondent to rebut that claim.

Market Value of the Mobile Home

- j) The Petitioners submitted the sale prices, addresses, size, year of construction and models, along with photographs of seven mobile homes located in a nearby mobile home park that sold between September 2000 and September 2003 in an attempt to show that the current assessment is excessive. *Petitioner Exhibit D*.
- k) The mobile homes presented as comparable sales sold between \$7,350 and \$20,000. They vary dramatically in age, construction features and quality. *Id*. Although the Petitioners presented photographs of those mobile homes, they did not provide any explanation of how those mobile homes are comparable to the mobile home on Parcel 3150. The Petitioners did not make the required comparison between the characteristics of their mobile home and the purportedly comparable properties. The Petitioners did not establish the similarities or differences between the subject and any of the comparable properties. Without substantial evidence about how the properties compare, the Petitioners’ statements are conclusory and do not constitute probative evidence.
- l) Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. A party, who relies on a sales comparison approach, must explain the

similarities and the differences, which affect the relative market values-in-use of the properties. *Long, 821 N.E.2d 466, 471*. The Petitioners failed to establish that any of the mobile homes submitted are comparable to the subject mobile home. Furthermore, they failed to establish how those sale prices relate to values as of January 1, 1999. *Id.* Therefore, the Petitioners did not make a prima facie case for any change.

Market Value of All Four Parcels

- m) The 2002 Real Property Assessment Manual (MANUAL) defines “true tax value” of real estate as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence, if it is consistent with the Manual’s definition of true tax value. For example, a taxpayer can use sales information regarding the subject or comparable properties to make a prima facie quantifying the market value of a property.
- n) The Petitioners briefly discussed the sales prices of several properties with secondary dwellings on site, but did not establish whether those prices relate to the value of the subject secondary dwelling or the overall assessment. Further, the Petitioners did not make any comparison between the similarities and differences in the features of the purportedly comparable properties and the subject property. The Petitioners failed to offer substantial evidence or explanation to support their claim. The Petitioners merely concluded that the subject properties should be valued as a single property at \$192,000. Such testimony is not probative evidence. It does not make a prima facie case.
- o) "Landlocked" is a term that means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." Black's Law Dictionary 894 (8th ed. 2004). The evidence clearly establishes that as of the assessment date, the subject properties are not landlocked. The Petitioners speculated that they could not sell the parcel where the mobile home is located separately because the only access would be via their private drive. That opinion, however, fails to consider that the Petitioners would be in a position to provide such access. The Petitioners failed to establish how access is relevant to the current value-in-use or what an appropriate change in value might be for that reason. Furthermore, the fact that the Petitioners might be able to turn part of their property into a landlocked parcel is not a reason to make any change to the current assessment.
- p) The Petitioners failed to make a prima facie case that the combined value of their four parcels is excessive. 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, 799 N.E.2d at 1221-1222*.

Conclusion

16. 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: May 30, 2006

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>>.