

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-013-02-1-4-00171
Petitioner: Carl Speichert
Respondent: Department of Local Government Finance
Parcel: 005-05-06-0012-0001
Assessment Year: 2002

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

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the "DLGF") determined the tax assessment for the subject property and notified the Petitioner on March 25, 2004.
2. The Petitioner filed the Form 139L on April 23, 2004.
3. The Board issued the notice of hearing to the parties dated March 3, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 6, 2005.

Facts

5. The subject property is located at 12029 Wicker Avenue in Cedar Lake.
6. The subject property is a commercial greenhouse operation on 6.50 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$218,800 Improvements \$73,200 Total \$462,700.
9. The assessed value requested by Petitioner:
Land \$178,800 Improvements \$48,900 Total \$227,700.
10. Persons present and sworn as witnesses at the hearing:
For Petitioner – Carl Speichert, taxpayer,
For Respondent – Steve McKinney, DLGF.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The informal hearing changed the original value for the subject property. It reduced the land value to \$218,800 and increased the improvement value to \$73,200. *Speichert testimony; Petitioner Exhibit 3.*
 - b) Employees of the Hanover Township Assessor's office inspected and revalued the subject property.¹ Their opinion indicated land value should be \$178,900 and improvement value should be \$48,900. The values reflect a land allocation change from all commercial land to 3.0 acres of commercial land, 2.0 acres of wooded agricultural land, and a 1.5-acre home site. *Speichert testimony; Petitioner Exhibit 6.*
 - c) Although the subject property has commercial use zoning, the current use of the subject property is divided between residential and commercial. The subject property is a total of 6.5 acres. The land use is divided with 4.5 acres used for commercial use and 2.0 acres used for residential use. *Speichert testimony.*
 - d) The construction age of the structure identified as Building 1 on the property record card should be 2000. *Speichert testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a) As a result of the informal hearing process, the land value was reduced and the improvement value was increased to correct mathematical errors. *McKinney testimony.*
 - b) The land is zoned for commercial use. Therefore, the current valuation as commercial land is correct. The DLGF will defer to the Board for a determination regarding the Petitioner's claim that part of the land should be valued as residential because it is used as a residential home site. *McKinney testimony.*
 - c) The construction age of the structure identified as Building 1 on the subject property record card was corrected to 2000. *Respondent Exhibit 1.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 1391,

¹ The Board notes that Mr. Speichert is also the Hanover Township Assessor.

- c) Exhibits:
Petitioner Exhibit 1 – Copy of original assessment notice,
Petitioner Exhibit 2 – Subject property record card reflecting the original assessment,
Petitioner Exhibit 3 – Final notice of assessment for the subject property,
Petitioner Exhibit 4 – Subject property record card reflecting the assessment following the informal hearing process,
Petitioner Exhibit 5 – A sketch of the subject buildings,
Petitioner Exhibit 6 – Subject property record card dated April 5, 2005,
Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Photograph of the subject property,
Respondent Exhibit 3 – The land calculation of the base rate and the neighborhood summary sheet applicable to the subject property,
Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,
- d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The evidence shows that there is no dispute about the age of Building 1. The current assessment lists the year of construction as 2000, which is exactly what Petitioner contends it should be. Although Petitioner claims that the total improvement value should be less, Petitioner offered no other issue, evidence or argument for a change

regarding the improvements. Therefore, the record does not establish that there should be any change regarding the assessment of the improvements.

- b) The Petitioner sought to have the land value reduced by adjusting the land use classifications. The evidence establishes that the total land area is 6.5 acres. It is currently assessed as 5 acres of primary commercial land and 1.5 acres of undeveloped, unusable commercial land. There was no dispute that the property currently is zoned for commercial use, a fact that the Respondent apparently believes is sufficient to support the current assessment. The Board does not, however, have the benefit of any authority or explanation from the Respondent in support of that position.²
- c) Nevertheless, there is undisputed evidence that a portion of the property is currently used for residential purposes. In this case, that evidence would be sufficient to constitute at least prima facie evidence that such property should be assessed as residential, not commercial land. 2002 REAL PROPERTY ASSESSMENT MANUAL at 2, 12 (incorporated by reference at 50 IAC .23-1-2). The Petitioner, however, also must prove what land should be changed to a residential classification because clearly part of the land currently is correctly identified as commercial. Here, the Petitioner stumbled on that next step.
- d) Although the Petitioner presented evidence of various land uses, the evidence was conclusory and provided conflicting information. For example, the property record card reflecting the proposed land allocations show 2.0 acres of wooded area and 1.5 acres of residential excess acres. The Petitioner testified that the wooded area is 2.0 acres and the home site is 2.0 acres. The Petitioner did not provide any explanation regarding this discrepancy. More importantly, Petitioner did not provide any maps or relevant evidence that his proposed land allocation is based on actual measurements or other probative facts. The conclusory evidence offered by Petitioner regarding land classification is not probative and it has no weight in determining how to allocate the land based on current use.
- e) The record in this case is not sufficient to identify what land, or specifically how much of the subject parcel should be changed to residential classification. Therefore, no change to the land classification can be made.

Conclusion

16. The Petitioner did not make a prima facie case. The Board finds in favor of the Respondent.

² Respondent noted that the land has commercial zoning and claimed the commercial land classification on the assessment should not be changed. Respondent neither challenged the fact that part of the property is currently used for residential purposes, nor provided any argument or explanation addressing why the current residential use of part of the land should not form the basis for the assessment of that land. Rather than directly dealing with the issue, Respondent simply attempted to "pass the buck" and deferred to the Board for a decision about proper land classification. That approach is not acceptable. The Board will not make a case for either party. Accordingly, the Petitioner would only need to make a prima facie case for relief.

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

- 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>.