

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-037-02-1-1-00050
Petitioner: Carlson Farms, Inc.
Respondent: Department of Local Government Finance
Parcel: 010-10-01-0006-0008
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 on March 16, 2005. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$237,700 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated February 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on March 16, 2005.

Facts

5. The subject property is located at 20100 Cline Avenue, Lowell.
6. The subject property is an 80-acre agricultural property with a house and five outbuildings.
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 is:
Land \$109,900 Improvements \$127,800 Total \$237,700.
9. The assessed value requested by Petitioner:
Land \$91,900 Improvements \$75,395 Total \$167,295.

10. The following persons were present and sworn as witnesses at the hearing:
For Petitioner – Carl L. Carlsson, President, Carlson Farms,
Carl J. Carlsson, Carlson Farms,
Randall S. Carlsson, Secretary, Carlson Farms,
For Respondent – Diane Spenos, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The one acre allocated to the agricultural homesite is too large and causes the land assessment to be too high. *C. L. Carlsson testimony.*
 - b) With the exception of the Quonset barn, the remaining outbuildings on the property are in poor condition and are not being used. The flat barn shown in the photograph is caving in and poses a danger. *C. L. Carlsson testimony; Petitioner Exhibit 2.* Attempts to have the flat barn demolished in exchange for its beams and siding have been unsuccessful due to lack of interest. *C. J. Carlsson testimony.*
 - c) The invoice for the demolition of a similar property shows that the cost to raze outbuildings and other structures is substantial. Due to the substantial demolition cost, the unused buildings have not been razed. *C. L. Carlsson testimony; Petitioner Exhibit 3.* The buildings are obsolete and should have some obsolescence depreciation. *C. L. Carlsson testimony.*
 - d) The assessing firm changed the neighborhood factor from 1.23 to 1.07 for the 2003 assessment and forward. *C. L. Carlsson testimony; Petitioner Exhibit 1.* The neighborhood factor for the 2002 assessment also should be changed to 1.07. *C. L. Carlsson testimony.*
 - e) The 28 percent depreciation factor applied to the subject dwelling is questionable and not sufficient to account for its age of 42 years. *C. L. Carlsson testimony.* The depreciation attributed to the dwelling prior to the reassessment was 50 percent. *C. L. Carlsson testimony.*
 - f) The annual gross rent for the subject property is \$5,700 with annual expenses of \$6,648. The annual net rent loss for the subject property is \$948. *C. L. Carlsson testimony; Petitioner Exhibit 4.*
 - g) If the same \$100,000 value of the dwelling were invested at a rate of return of 5 percent, the result would be an annual income of \$6,800 on top of the original \$100,000 investment. *C. L. Carlsson testimony.* Instead the rental investment of the subject property is losing money and the current tax system is making it very hard on the tenants. *R. S. Carlsson testimony.*

12. Summary of Respondent's contentions in support of the assessment:
- a) A one-acre homesite is allocated to each dwelling with more than one acre of land. This is the standard acreage assessed and allowed for in the homestead exemption. *Spenos testimony.*
 - b) All of the subject outbuildings are rated in poor or very poor condition. *Spenos testimony; Respondent Exhibit 3.* The flat barn is rated as in very poor condition with 85 percent physical depreciation applied. While some obsolescence is apparent in the outdated flat barn as well as in all the outbuildings, how much obsolescence is unknown. *Spenos testimony; Respondent Exhibit 2.*
 - c) The silo should have no value, rather than the current value of \$1,000. *Spenos testimony; Respondent Exhibit 3.*
 - d) The property record card for the 2002 assessment shows a neighborhood factor of 1.23. The property record card presented by the Petitioner shows the neighborhood factor was changed to 1.07 for 2003 and 2004. *Spenos testimony; Respondent Exhibit 3; Petitioner Exhibit 1.*
 - e) The 28 percent depreciation applied to the dwelling is derived from the depreciation chart in the assessment guidelines and is based on the grade, age and condition rating from the tables applicable to the 2002 reassessment. *Spenos testimony; Respondent Exhibit 4.* The depreciation tables used prior to the 2002 reassessment have been revised and are no longer applicable.
 - f) The Respondent did not offer any evidence regarding the net rent loss issue.

Record

13. The official record for this matter is made up of the following:
- a) The Form 139L,
 - b) The tape recording of the hearing labeled Lake County 1220,
 - c) Exhibits:
 - Petitioner Exhibit 1 – The subject property record card for 2003,
 - Petitioner Exhibit 2 – An interior photograph of the flat barn,
 - Petitioner Exhibit 3 – A copy of an invoice for demolition of a property located at 314 Union Street in Lowell,
 - Petitioner Exhibit 4 – A net rent loss calculation and lease agreement,
 - Respondent Exhibit 1 –Form 139L,
 - Respondent Exhibit 2 – The subject property record card,
 - Respondent Exhibit 3 – Photographs of dwelling and outbuildings,

Respondent Exhibit 4 - Depreciation Table from the REAL PROPERTY ASSESSMENT
GUIDELINES FOR 2002 – VERSION A, app. 3 at 12,
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 law is:
- 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.

Homesite Allocation

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) While the Petitioner argued the standard 1 acre homesite allocated to the subject rental home is too large and makes the homesite valuation excessive, the Petitioner did not present any probative evidence to establish what the correct size of the homesite should be.
 - b) The Petitioner bears the burden of showing that the current assessment is incorrect and what the correct assessment should be. The Petitioner has failed to do so. *Meridian Towers*, 805 N.E.2d 475; *Clark*, 694 N.E.2d 1230.
 - c) The record does not prove that the homesite must be changed to any other specific size.

Assessment of Outbuildings

16. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) "Very poor" condition applies to structures that are unusable and are approaching abandonment. GUIDELINES, app. B at 7. This rating is the lowest one provided.
 - b) The photograph of the flat barn provides evidence that the barn is unsound. The evidence regarding the usefulness of the remaining structures, with exception to the Quonset hut, indicates that the remaining structures are also unsound. They already are assessed as being in very poor condition, which is consistent with that evidence. While the Petitioner presented evidence that those buildings are no longer useful, the Petitioner has not presented any probative evidence that the value of those buildings is less than the current assessment.
 - c) The Petitioner established some financial burden in razing unused structures. The evidence proves what a contractor expects to be paid for the removal of structures located on a similar property. This evidence does not show that the structures located on the subject property are entirely without value.
 - d) The Petitioner has the burden of presenting evidence establishing that the current assessment is incorrect and what the correct assessment should be. . *Meridian Towers*, 805 N.E.2d 475, 478; *Clark*, 694 N.E.2d 1230. The Petitioner did not offer any evidence to establish what the correct assessment should be. The Petitioner simply pointed to the condition of the outbuilding and made the conclusion that the outbuildings should not be assessed. Such conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - e) Nevertheless, the undisputed evidence in this record establishes that the assessed value of the silo should be zero. That part of the assessment should be changed.

Neighborhood Factor

17. The evidence supports the Petitioner's contention that the neighborhood factor must be corrected. This conclusion was arrived at because:
- a) The neighborhood factor was changed for 2003 and 2004 from 1.23 to 1.07. The property record card indicates that the change is a correction of a clerical error. The assessing firm changed the neighborhood factor from 1.23 to 1.07.
 - b) The assessing firm acknowledged that the application of a 1.23 neighborhood factor was a clerical error. This evidence is sufficient to establish that the neighborhood factor of 1.23 is incorrect for the 2002 assessment year and that the correct neighborhood factor should be 1.07.

- c) The burden shifted to the Respondent to present evidence rebutting the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479. The Respondent has failed to do so.
- d) The Respondent attempted to rebut the Petitioner's evidence by pointing to the neighborhood factor applied for 2002 and claiming it correct. This kind of testimony is not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E. 1215, 1222 (Ind. Tax Ct. 2003) (stating that conclusory statements are not probative evidence).

Physical Depreciation

18. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The Petitioner did not offer any probative evidence to show that the current amount of depreciation is incorrect. The Petitioner merely claimed that the 28 percent depreciation applied to the subject dwelling was insufficient to account for its age and pointed to the amount of depreciation applied prior to the 2002 reassessment.
 - b) 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). Even if it is true that the dwelling got more physical depreciation for a prior assessment, that fact is not relevant to what the 2002 assessment should be.
 - c) In order for the Petitioner to meet its burden of establishing a prima facie case, the Petitioner must offer probative evidence concerning the correct assessment. Instead, the Petitioner offered only conclusory statements, which do not represent probative evidence. *Whitley Products*, 704 N.E.2d at 1119. It did not make a prima facie case on this issue.

Net Rent Loss Calculation

19. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
- a) The net rent loss calculation demonstrates that the net loss of the subject property is \$948 based on an annual income of \$5,700 and annual expenses of \$6,648.
 - b) While the net rent loss calculation demonstrates that the subject property is operating at a loss, the Petitioner did not shown how this loss affects the value of the property.
 - c) The Petitioner needed to explain how the net rent loss is relevant to the requested assessment. *Indianapolis Racquet Club*, 802 N.E.2d 1022. In this case, the Petitioner failed to explain how those calculations prove the requested value.

Conclusions

20. The Petitioner failed to make a prima facie case regarding the allocation of the one acre homesite. The Board finds in favor of Respondent.
21. The Petitioner failed to make a prima facie case regarding the assessment of the flat barn, chicken barn, and utility shed. The Board finds in favor of the Respondent.
22. The evidence established an error regarding the assessment of the silo. The Board finds in favor of the Petitioner.
23. The Petitioner made a prima facie case regarding the neighborhood factor. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner.
24. The Petitioner failed to make a prima facie case regarding the dwelling's depreciation. The Board finds in favor of the Respondent.
25. The Petitioner failed to make a prima facie case based on income calculations. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines that the assessment should be changed regarding the assessment of the silo and the neighborhood factor, but it should not be changed regarding any other claim.

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 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>.