INDIANA BOARD OF TAX REVIEW

Final Determination
Findings and Conclusions
Lake County

Petition #: **45-037-02-1-1-00129**
Petitioners: **Gary D. & Mary E. Nord**
Respondent: **Department of Local Government Finance**
Parcel #: **0101100100090020**
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 February 17, 2004, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property is $135,000. The DLGF's Notice of Assessment was sent to the Petitioners on March 23, 2004.

2. The Petitioners filed a Form 139L on April 21, 2004.

3. The Board issued a notice of hearing to the parties dated February 18, 2005.

4. A hearing was held on March 22, 2005, in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is located at 10504 W. 205th Ave., Lowell in West Creek Township.

6. The subject property is classified as agricultural consisting of 10.880 acres (1 acre homesite, 7.880 acres agricultural excess acreage, and 2 acres farm buildings), a dwelling and out buildings.

7. The Special Master did not conduct an on-site visit of the property.

8. The DLGF determined the assessed value of the subject property to be $77,100 for the land and $57,900 for the improvements for a total assessed value of $135,000.

9. The Petitioners did not request a specific value on their Form 139L.

10. Mary Nord, one of the property owners, and Joseph Lukomski, Jr., representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

a) The Petitioners contend that the neighborhood factor is too high. According to the Petitioners, in 1996 the neighborhood rating was "poor". The neighborhood has not improved since 1996 in fact it has gone downhill. The Petitioners testified that there are two stone quarries in the neighborhood and the area has been approved for a concrete-asphalt plant and a tire shredding plant. These additions will further increase truck traffic. *Nord testimony & Petitioner Exhibits 4 and 6.*

b) The Petitioners also contend that the pricing on the three grain bins is excessive. According to the Petitioners, the grain bins have not been used for years and are obsolete. *Nord testimony.*

c) The Petitioners also allege that the land pricing is excessive. According to the Petitioners, 7.88 acres of the total 10.88 acres are priced at $5,000 per acre. *Petitioner Exhibit 4.* The 7.88 acres are pasture land and were valued as non-tillable land in the 1989 assessment. *Petitioner Exhibit 5.* At the informal hearing, the 7.88 acres were valued as residential excess acreage and changed to agricultural excess acreage but are still charged at the same price per acre. *Nord testimony* & *Petitioner Exhibit 4.* The Petitioners contend that the 7.88 acres should be valued at $1,050 per acre or less. *Nord testimony.*

d) Finally, the Petitioners contend that neighboring properties are not being assessed similarly. According to Petitioners, one neighbor's property has four excess acres that are not being used and are classified as non-tillable land. Another neighbor has property similar to the subject property with additional acreage priced at $1,050 per acre. *Nord testimony.*

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

a) The Respondent testified that land rates and neighborhood factors are set by the assessing officials based on comparable sales in the area. The values were advertised and a public hearing was held so that taxpayers could participate. *Lukomski testimony.*

b) The Respondent also presented comparable sales with the same neighborhood factor as the subject property. *Id.* The Respondent noted that a neighborhood does not necessarily mean the four or five houses closest to the subject property, but similar properties with similar characteristics. *Id.*

Record

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

a) The Petition.

b) The tape recording of the hearing labeled BTR # 1298.

c) Exhibits:

Petitioner Exhibit 1: Form 139L Petition
Petitioner Exhibit 2: Summary of Arguments
Petitioner Exhibit 3: Evidence Explaining Relevance
Petitioner Exhibit 4: Current Assessment
Petitioner Exhibit 5: Prior Assessment (1989) Inventory Contents
Petitioner Exhibit 6: Prior Assessment (1996) Form 11 R/A
Petitioner Exhibit 7: Assessment for Year 2003
Petitioner Exhibit 8: Final Assessment
Petitioner Exhibit 9: Hand Drawn Location Maps

Respondent Exhibit 1: Form 139L
Respondent Exhibit 2: Subject Property Record Card (PRC)
Respondent Exhibit 3: Subject Photographs (5)
Respondent Exhibit 4: Sales Report
Respondent Exhibit 5: Comparable Sales PRCs

Board Exhibit A: Form 139 L Petition
Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:

a) A Petitioner seeking review of a determination of the DLGF 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.

14. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions that the neighborhood factor is too high or that the grain bins were over-valued. Petitioners did, however, raise a prima facie case that 7.88 acres of the subject property were categorized incorrectly as "agricultural excess acreage." This conclusion was arrived at because:

Neighborhood Factor

a) The Petitioners contend that the neighborhood factor is too high. According to the Petitioners, in 1996 the neighborhood rating was "poor," and the neighborhood has not improved since 1996. *Nord testimony.*

b) According to the REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A (the GUIDELINES), app. B at 8, an assessing official must determine a neighborhood factor for the neighborhood in which the subject property is located. A neighborhood is defined as a "geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics." GUIDELINES, glossary at 14. The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes into account the "economic characteristics" of a neighborhood "such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size." *Id.* Neighborhood factors are assigned to each neighborhood "based upon an analysis of residential properties that have sold within the neighborhood." *Id.* The factor is computed by dividing the actual sales price of a property's improvements (determined by subtracting the land value) by the assessed improvement value. *Id*. at 9. The resulting number is an adjustment factor to further refine assessments in a neighborhood so that they better reflect the market value-in-use.

c) The Petitioners contend the subject property's neighborhood factor is too high at 1.23. *Nord testimony*. However, the Petitioners do not show that a different neighborhood factor was applied to the subject property than to other properties in the same neighborhood or that an error was made in calculating the neighborhood factor that is applied to the subject property. The Petitioners presented no alternative calculations and suggested no alternative neighborhood factor. Instead, the Petitioners merely contend their neighborhood factor is excessive. This falls far short of the burden imposed upon a Petitioner. To prevail in an appeal, a Petitioner must demonstrate

both that an 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).

d) Petitioners' reliance on the previous assessment of the neighborhood as "poor," likewise, does not support their contentions. Each assessment year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645,650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). Evidence as to a property's assessment in one tax year is not probative of its true tax value in a different year. *See, Id.*

e) Accordingly, the Petitioners failed to establish error in the current neighborhood factor.

Land Value

a) The Petitioners contend that the land pricing is excessive. According to Petitioners, 7.88 acres of the total 10.88 acres are pasture land and were valued as non-tillable land in the 1989 assessment at a base rate lower than the current $5,000 per acre. *Petitioner Exhibit 5.* In response to questioning, the Petitioners testified that the land at issue is neither part of their yard, nor maintained as a lawn. *Nord testimony.* At the informal hearing, the 7.88 acres valued as residential excess acreage, was changed to agricultural excess acreage but still valued at the same per acre rate. *Nord testimony & Petitioner Exhibit 4.*

b) The value of classes of residential land, commercial land, industrial land, and agricultural lands are determined by the township assessor representing the January 1, 1999 market value in use of improved land. GUIDELINES, ch. 2 at 7. Agricultural lands include the following land types (among others): One acre per dwelling on an agricultural property is classified as agricultural homesite land (land type 9). The base rate for an agricultural homesite acre is a flat rate determined by the township assessor. A soil productivity factor is not applied. *Id.* at 105. Agricultural excess acres are land presently dedicated to a non-agricultural use normally associated with the homesite (land type 92). Areas containing a large manicured yard over and above the accepted one acre homesite would qualify for the agricultural excess acre designation. The agricultural excess acre rate is the same rate that is established for the residential excess acre category. *Id.* at 105 and 106. Tillable land is land used for cropland or pasture that has no impediments to routine tillage (land type 4) and nontillable land is land covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production (land type 5). A 60% influence factor deduction applies to nontillable land. *Id*. at 103, 104.

c) The Petitioners testified that the 7.88 acres, presently categorized as agricultural excess acres, are pastureland that are not maintained as yard or used as part of the

homesite. Petitioners raise a prima facie case that the 7.88 acres classified as land type 92 have been improperly categorized. The Respondent did not present evidence disputing the characterization of this land as pastureland. Thus, the Board finds the classification of 7.88 acres of the property as agricultural excess land to be in error. Though the Petitioners submitted information that indicated that 7.88 acres of the subject property had been classified as nontillable lands in 1989, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different year. *Petitioner Exhibit 5.* Each assessment year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners,* 747 N.E.2d 645,650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). Thus, while Petitioners have raised a prima facie case that the 7.88 acres are not agricultural excess acres, they have not provided sufficient evidence to determine whether the 7.88 acres are tillable or nontillable land. Therefore, barring evidence to the contrary, the Board finds the land to be tillable and determines that the 7.88 acres should be assessed as land type 4.

Grain Bins

a) Finally, the Petitioners contend that the assessment on the grain bins is excessive because they are not being used, have not been used for years, and are obsolete. *Nord testimony*. The grain bins were built in 1940, are in poor condition, graded "D", receiving 80% physical depreciation and are valued at $2,400 each. *Petitioner Exhibit 4.*

b) The mission of a reassessment is to inventory, verify, and value all real estate parcels, including the land, buildings and fixtures situated on the land and appurtenances to land. GUIDELINES at 2. There is no disagreement between the parties as to the existence of the grain bins on the Petitioners' property. *Nord testimony & Respondent Exhibit 2.* The fact that the Petitioners do not use them or may not have used them for years does not preclude the structures from being valued as part of the reassessment.

d) Further, the Petitioners did not show that the current assessment on the grain bins is incorrect nor did the Petitioners present any evidence as to what the assessment should be for the grain bins. A taxpayer alleging that he is entitled to an adjustment for obsolescence has a two-prong burden of proof: (1) the taxpayer must identify the causes of obsolescence, and (2) the taxpayer must quantify the amount of obsolescence he seeks. *Clark v. State Board of Tax Commissioners,* 694 N.E.2d 1230, 1241 (Ind. Tax 1998). In fulfilling the requirements of each of these prongs there has to be an actual loss in the value of the property. Probative evidence must show that the factors identified as causing the obsolescence are causing an actual loss in the property value. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs,* 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Petitioners do not meet this burden. Petitioners merely allege that the assessment is too high. Such conclusory statements are not probative and do not make a prima facie case. *Blackbird Farms Apts. v. Dep't*

of Local Gov't Fin., 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002); *Whitley Products, Inc. v. State Bd. Of Tax Comm'rs.*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusions

15. The Petitioners failed to make a prima facie case that the neighborhood factor and the grain bin assessment are too high, but raised a prima facie case that 7.88 acres of the subject property should not be valued as agricultural excess acres. The Respondent did not rebut this evidence. Thus, the Board finds in favor of the Petitioners, in part, and holds that 7.88 acres of the subject property should be assessed as tillable land (land type 4).

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that a change to the assessment should be made regarding the 7.88 acres.

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 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/trialproc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code.