

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-037-02-1-5-00148
Petitioner: John Rokosz
Respondent: Department of Local Government Finance
Parcel: 010-10-01-0050-0032
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 Department of Local Government Finance (the DLGF) determined that the assessment for the subject property was \$179,700.
2. The Petitioner filed a Form 139L on August 3, 2004.
3. The Board issued a notice of hearing to the parties dated February 25, 2005.
4. Special Master Paul Stultz held the hearing, in Crown Point on March 31, 2005.

Facts

5. The subject property is located at 11503 W. 151st Avenue in Cedar Lake. This location is in West Creek Township.
6. The subject property is a single family dwelling located on 5.094 acres.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$47,900 Improvements \$131,800 Total \$179,700.
9. The assessed value requested by the Petitioner is:
Land \$35,800 Improvements \$131,800 Total \$167,600.
10. The following persons were present and sworn as witnesses at the hearing:
 John Rokosz, taxpayer,
 Don Adair, Assessor/Auditor.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a) The parcel was assessed as a one acre homesite and 4.094 acres of residential excess acreage. *Petitioner Exhibit 3; Respondent Exhibit 2*. The homesite is only one fourth of an acre. The remaining land should be assessed as agricultural. *Rokosz testimony*.
 - b) The Petitioner has farmed the parcel since 1968. It is zoned agricultural. He raised and sold cattle during 2003. He annually rotates fields from hay and pasture to corn, and maintains an apple orchard on a portion of the parcel. He is also a registered sales tax exempt buyer at granaries and seed retail outlets, which is a further indication of his farming activities. *Rokosz testimony; Petitioner Exhibit 2*.
 - c) The Petitioner presented several documents as proof the land is used for agricultural purposes. These include copies of a pesticide license, a portion of his 2003 Federal Form 1040 Individual Income Tax Return with Schedule F, Profit or Loss From Farming, and two photographs of a portion of the parcel showing open fields. *Petitioner Exhibits 4-6*.

12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent presented an exhibit identifying twenty comparable properties. *Respondent Exhibit 4*. The Respondent contended four of the twenty comparable properties have five acres, similar to the acreage of the Petitioner's parcel. Each of these four comparable parcels is assessed with one acre homesites and the remaining portion of the parcel is assessed as residential excess acreage. The Respondent acknowledged he had no knowledge of the actual use of the residential excess acreage for these parcels. *Adair testimony*.
 - b) The Respondent acknowledged the Petitioner provided testimony and production records sufficient to indicate the Petitioner was engaged in farming the subject land. *Adair testimony*.
 - c) The Respondent contended the property must be considered as a whole and the land and the improvement assessments should not be separated. Due to assessments being valued on a market in use system, property must be valued as of January 1, 1999. A change in data characteristics such as grade and condition does not necessarily warrant a reduction in the subject's total True Tax Value. *Adair testimony*.

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 BTR 1416,
- c) Exhibits:
 - Petitioner Exhibit 1: Copy of page 1 of Form 139L,
 - Petitioner Exhibit 2: Summary of argument,
 - Petitioner Exhibit 3: Copy of the subject property record card and Real Property Maintenance Report,
 - Petitioner Exhibit 4: Copy of pesticide license,
 - Petitioner Exhibit 5: Copy of a portion of the Petitioner's 2003 Form 1040 Income Tax Return and Schedule F,
 - Petitioner Exhibit 6: Two photographs of farm ground,
 - Respondent Exhibit 1: Copy of Form 139L,
 - Respondent Exhibit 2: Copy of the subject property record card,
 - Respondent Exhibit 3: Photograph of the subject improvement,
 - Respondent Exhibit 4: Copy of sheet listing comparable properties with property record cards and photographs attached,
 - Respondent Exhibit 5: Copy of plat map,
 - 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 provided sufficient evidence to support the Petitioner's contentions. This conclusion was arrived at because:
- a) The parcel was assessed with a one acre homesite. The Petitioner stated that his homesite is only one fourth of an acre, rather than an entire acre. Nevertheless, the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 68 (incorporated by reference at 50 IAC 2.3-1-2) states that an area of one acre per residential dwelling unit will be assigned to agricultural homesites. There is no change in the area of the parcel currently designated as a homesite.
 - b) The Petitioner contended the remaining portion of the parcel should be classified as agricultural land. This area is currently assessed as residential excess acreage.
 - c) Agricultural property is defined as “[t]he land and improvements devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, glossary at 1. The property classification and pricing method are determined by the property's use or zoning. GUIDELINES, ch. 2 at 68.
 - d) The Petitioner presented testimony that established the use and zoning of this acreage is agricultural. In support of this testimony, the Petitioner also presented a copy of a pesticide license, a copy of a portion of his 2003 Federal Form 1040 Individual Income Tax Return with Schedule F, Profit or Loss From Farming, and two photographs of a portion of the parcel showing open fields. Thus, Petitioner presented sufficient probative evidence to establish a prima facie case that 4.094 acres should be classified as agricultural.
 - e) The Respondent agreed the Petitioner provided sufficient evidence to support the claim the 4.094 acres are used for agricultural purposes. Nevertheless, Respondent contended the Petitioner's parcel has been assessed in a manner consistent with other similarly situated properties. In support of this contention, the Respondent presented evidence of four parcels, each containing five acres. All of these parcels were assessed as one acre homesites with the remainder of the parcel assessed as residential excess acreage.
 - f) The Respondent, however, did not establish the land use of the four alleged comparable properties. Without demonstrating the alleged comparable properties are similar in use to the parcel under appeal, the Respondent has failed to establish these properties are comparable. *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Unless they are comparable, those other assessments have no relevance or probative value in this case. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - g) The Respondent also asserted the assessment must be considered as a whole and the assessments of the land and the improvements should not be separated. The Respondent contended a change in data characteristics, such as grade and condition, does not necessarily warrant a reduction in the total True Tax Value. As long as the

value being determined is based upon the cost approach as expressed in the GUIDELINES, it is essential that the elements contained therein be properly applied. Respondent's position might be justified if Respondent were attempting to prove a total value for the property based on some other approach, such as comparable sales or income. In this case, however, Respondent has made no such attempt. Therefore, Respondent's position on this issue is mistaken.

- h) As indicated, the Respondent failed to establish that any of the purported comparable properties are, in fact, comparable to the parcel under appeal. Further, the total assessed values of the four most comparable properties identified by the Respondent range from \$125,500 to \$224,200. The Respondent offered no explanation about how these assessments support the current assessed value of \$179,700.
- i) The Respondent failed to rebut the Petitioner's prima facie case. Accordingly, the 4.094 acres that are currently assessed as residential excess acreage should be assessed as agricultural land.

Conclusion

- 16. The Petitioner made a prima facie case. The Respondent did not rebut the Petitioner's evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>>.