

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00124
Petitioner: John A. & Cheryl L. Rosevear
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0069-0006
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 October 27, 2003 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$1,112,700 and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 22, 2004.
3. The Board issued a notice of hearing to the parties dated February 15, 2005.
4. Special Master Patti Kindler held a hearing in Crown Point on March 18, 2005.

Facts

5. The subject property is located at 17806 White Oak Avenue, Lowell.
6. The subject property is a 6,776 square foot single family dwelling with an attached 3-car garage and an outbuilding located on 9 acres.
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 \$65,500 Improvements \$1,047,200 Total \$1,112,700.
9. The Petitioners did not request a specific assessed value on the Form 139L or at the hearing.

10. The following persons were present and sworn in at hearing:

For Petitioner – John A. Rosevear, property owner,
Cheryl L. Rosevear, property owner,
For Respondent – Diane Spenos, DLGF.

Issues

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:

Assessment of the Land

- a) There are two discrepancies in the pricing of the subject property: 1) the eight acres located with the one acre home-site are priced excessively in comparison to the adjoining agricultural acreage, and 2) the assessment on the subject property exceeds its market value. *C. Rosevear testimony; Petitioner Exhibit 4.*
- b) The value of \$29,500 for the one acre home site is not in dispute; the dispute is with the \$4,500 per acre value applied to the remaining eight acres of land. *C. Rosevear testimony; Petitioner Exhibit 5.*
- c) The subject property is unique because it adjoins an additional 80 wooded acres resulting in a total of 89 acres comprising the home site. *C. Rosevear testimony; Petitioners Exhibits 6, 7.* The 8 wooded acres priced as excess residential should be valued as vacant agricultural acreage as class code “100 Vacant Agricultural” like the adjoining 80 acres. *C. Rosevear testimony; Petitioner Exhibit 8.*
- d) The Notices of Final Assessment submitted for the contiguous acreage parcels show that the acreage parcels have values that range from \$150 to \$180 per acre for the excess agricultural acreages compared to the 8 acres identified as residential excess acres valued at \$4,500 per acre even though the land use for both properties is the same. *Petitioner Exhibit 8, 9.*

Assessment of the Dwelling

- e) The subject property is excessively assessed at \$1,112,700, or \$164.21 per square foot. *C. Rosevear testimony; Petitioner Exhibit 9A.* The comparable assessments include a 3,749 square foot home located in the gated community of Briar Ridge Add, which is assessed for \$162.87 per square foot and a 7,582 square foot home located at 15455 Hendricks with an assessment of just \$61.90 per square foot, both of which are valued substantially lower than the subject property. *C. Rosevear testimony; Petitioners Exhibit 9B, 9C.*

- f) The home located in the gated Briar Ridge Addition is the most comparable to the subject dwelling. *C. Rosevear testimony*. However, the subject property is assessed for about \$2.00 more per square foot than the home in the gated Briar Ridge Addition with guards on duty, city sewage and water, and paved streets with curbs. *J. Rosevear testimony; Petitioners Exhibit 9A, 9B*. The Briar Ridge home would sell for more than its assessment of \$610,000, but the subject property would not sell on the market for its assessment of over \$1,000,000. *C. Rosevear testimony*.
 - g) The construction cost of approximately \$750,000 in 1994 to build the home with a three quarter mile gravel drive would not equate to its market value partly due to its location on an 80 acre parcel in an unincorporated area without public amenities or services. *J. Rosevear testimony*.
 - h) A grade of “B” was applied to the dwelling in the last reassessment based on the opinion of two assessors who viewed the property. *J. Rosevear testimony*. The grade was changed to an “A+2” for the 2002 reassessment. *J. Rosevear testimony*.
12. Summary of Respondent’s contentions in support of the assessment:
- a) There are few comparable sales to the subject home with its “A+2” grade to support its market value. *Spenos testimony; Respondent Exhibit 2*. If the property’s construction contract was available or photographs of the interior were submitted to rebut the grade, the assessment could be adjusted accordingly. *Spenos testimony*.
 - b) The 8 excess residential acres should not have been assessed as excess residential acreage. *Spenos 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 Lake County1258,
 - c) Exhibits:
 - Petitioner Exhibit 1 – A copy of the Form 11,
 - Petitioner Exhibit 2 – A copy of the Form 139L petition,
 - Petitioner Exhibit 3 – A copy of the Notice of Final Assessment,
 - Petitioner Exhibit 4 – A summary of Petitioners’ argument,
 - Petitioner Exhibit 5 – The subject land assessment data from Lake County Assessor,
 - Petitioner Exhibit 6 – A topographical map of parcels with acreage outlined,
 - Petitioner Exhibit 7 – A plat map with subject acreages outlined,
 - Petitioner Exhibit 8 – Copies of the Notices of Final Assessment for adjoining agricultural plats,
 - Petitioner Exhibit 9A – The assessment data for the subject property,

Petitioner Exhibit 9B – The assessment data for a property located in Briar Ridge,
Petitioner Exhibit 9C – The assessment data for a property located at 15455
Hendricks,
Respondent Exhibit 1 – A copy of the Form 139L petition,
Respondent Exhibit 2 – The subject property record card,
Respondent Exhibit 3 – Photographs of the front and side view of the subject
property,
Respondent Exhibit 4 – Sales of properties in West Creek Township sales with
corresponding property record cards,
Respondent Exhibit 5 – Part of a plat map showing the subject property,
Board Exhibit A – The Form 139 L,
Board Exhibit B – The Notice of Hearing,
Board Exhibit C – The 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.

Assessment of the Land

15. The Petitioners provided sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:

- a) The evidence presented by the Petitioners shows that the adjacent acreage, which is used in the same manner as the subject property, is valued as vacant agricultural acreage while 8 of the subject property’s acreage is valued as excess residential

acreage. *C. Rosevear testimony; Petitioner Exhibit 4.* The evidence presented by the Respondent supports the Petitioners' case. The Respondent offered testimony that the 8 acres should not be valued as excess residential acreage. *Spenos testimony.*

Assessment of the Dwelling

16. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:
- a) The property assessment data for the properties located in Briar Ridge and at 15455 Hendricks show that these properties are assessed for less than the subject property. *Petitioner Exhibit 9A, 9B, 9C.* The comparable properties are valued at \$162.87 a square foot and \$61.90 a square foot, respectively, while the subject property is valued at \$164.21 a square foot. *C. Rosevear testimony; Petitioners Exhibit 9A, 9B, 9C.*
 - b) While this evidence does show that the proffered comparable properties are valued at lower level than the subject property, this evidence does not show that the current assessment is incorrect because the Petitioners failed to show how or why these properties are comparable to the subject property. Simply claiming that a property is comparable is not enough to establish comparability. The Petitioners claim is merely a conclusory statement and does not constitute probative evidence. *Long v. Wayne Township Assessor, 821 N.E.2d 466 (Ind. Tax Ct. 2005).*
 - c) The Petitioners also presented evidence that the home was built for approximately \$750,000 in 1994. For evidence of value to be of probative value, the Petitioners must show how and why the evidence offered is relevant to the January 1, 1999 valuation date. The Petitioners failed to do so. *Long, 821 N.E.2d 466.* The Petitioners merely presented the 1994 construction cost and did not express how, or if, these costs were relevant to the valuation date.

Conclusions

16. The Petitioners made a prima facie case regarding the assessment of the land. The Respondent did not rebut the Petitioners' evidence. The Board finds in favor of the Petitioners.
17. The Petitioners did not make a prima facie case regarding the assessment of the dwelling. 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 be changed with regard to the land assessment and should not be change with regard to the dwelling assessment.

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 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>>.