

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-032-02-1-5-00486
Petitioners: Melvin & Gale Lolkema
Respondent: The Department of Local Government Finance
Parcel #: 009-09-11-0006-0019
Assessment Year: 2002

The Indiana Board of Tax Review (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 January 17, 2004. The Department of Local Government Finance (DLGF) determined that the tax assessment for the subject property is \$347,500 and notified Petitioners.
2. Petitioners filed Form 139L on April 16, 2004.
3. The Board issued a notice of hearing to the parties dated November 15, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point December 15, 2004.

Facts

5. Subject property is located at 142 E. Phillips Road, Griffith. The location is in St. John Township.
6. The subject property consists of a one and one half story, brick and frame dwelling, two farm utility sheds, and a detached garage. The improvements are located on 13.810 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of subject property as determined by the DLGF:
Land \$52,000 Improvements \$295,500 Total \$347,500.
9. Petitioners did not request a specific assessed value.

10. Persons sworn as witnesses at the hearing:
Melvin Lolkema, Owner,
Sharon Elliott, Department of Local Government Finance.

Issues

11. Summary of Petitioners' contentions supporting an error in the assessment:
- a. Of the 13.81 acres of land that comprise the subject parcel, 11.81 acres are farmed or are woods and creek banks. None of the 11.81 acres is buildable according to the Department of Natural Resources because they are in a designated flood plain area. The other two acres comprise a one-acre home site and one acre for the outbuildings. Currently 12.81 acres are assessed incorrectly as residential excess acreage. *Petitioner Exhibit 1 at 1; Petitioner Exhibit 3; Lolkema testimony.*
 - b. Petitioners own three other parcels of land that are contiguous to the subject. They total 64.097 acres. This acreage is currently soil typed and assessed appropriately as farmland. *Petitioner Exhibit 1, at 2-4; Lolkema testimony.*
 - c. The property was purchased in late 1998 for \$52,000. This purchase price included the existing outbuildings and an old house. The old house was torn down after the purchase. At the time of sale, Petitioners rented and farmed the subject property. An appraisal by Willie and Stiener Associates on October 8, 1998, sets the value of the land, the old dwelling and the existing outbuildings at \$51,100. *Petitioner Exhibit 1 at 1; Petitioner Exhibit 2; Lolkema testimony.*
 - d. Petitioners built the house currently being assessed in 2000. An insurance declaration sets the replacement value of the new dwelling and existing outbuildings at a total maximum cost of \$212,500. *Lolkema testimony.*
 - e. Petitioners believe that the only error on the assessment is that 12.81 acres is assessed incorrectly as residential excess land and should be classified as farmland. *Lolkema testimony.*
12. Summary of Respondent's contentions:
- a. Petitioners submitted photographs and invoices from the local agricultural cooperative that demonstrated to Respondent that the land was incorrectly classified as residential excess acreage. *Elliott testimony.*
 - b. Petitioners failed to provide a breakdown of how many acres were planted in corn, beans, etc. Therefore, Respondent was unable to reassess by soil type. *Elliott 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 County 1139,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Subject property record card and comparable property record cards,
 - Petitioner Exhibit 2 - October 8, 1998, Appraisal from Wille & Stiener,
 - Petitioner Exhibit 3 - DNR flood plain information and maps,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photographs,
 - Respondent Exhibit 4 - Comparable analysis sheet,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,
 - Board Exhibit C - Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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. Where Petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
15. The evidence is sufficient to establish Petitiones' claim that the property should be assessed as agricultural land. Respondent agreed that land was classified incorrectly as residential excess acreage. The DLGF agreed that the subject property was a working

farm. The DLGF did not rebut or impeach the evidence that of the 13.81 acres, 1 acre is the home site (already assessed as such). The balance, 12.81 acres, should be assessed as agricultural land. The DLGF failed to establish how its prior inability to determine soil productivity types is significant to the issue or how it would justify an incorrect assessment. Thus, even if that point about soil productivity types is correct, it does not change the outcome of this determination. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.

Conclusion

16. Petitioners provided sufficient evidence to establish a prima facie case. Respondent agreed that 12.81 acres of the subject land was incorrectly classified. The Board's final determination is that the 12.81 acres be assessed as agricultural land using the appropriate soil productivity types. The Board finds for the Petitioners.

Final Determination

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

ISSUED: **9-06-2005**

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>.