

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00025
Petitioners: Milton & Judith Schlueter
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0065-0020
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 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$205,800. The DLGF's Notice of Final Assessment was sent to the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 5, 2004.
3. The Board issued a notice of hearing to the parties dated July 21, 2004.
4. A hearing was held on August 26, 2004, in Crown Point, Indiana before Special Master S. Sue Mayes.

Facts

5. The subject property is located at: 13210 W. 173rd Avenue, Lowell, West Creek Township, Lake County.
6. The subject property consists of a single-family residence and two (2) additional structures on a twenty (20)-acre parcel of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of the subject property as determined by the DLGF are:

Land \$101,500 Improvements \$104,300 Total \$205,800

Assessed Values requested by Petitioners per the Form 139L petition are:

Land \$ 54,950 Improvements \$104,300 Total \$159,250

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioners: Milton Schlueter, Property Owner
Rick Niemeyer, West Creek Twp. Assessor

For Respondent: David M. Depp, Senior Appraiser for Cole-Layer-Trumble (CLT)
representing DLGF

Issue

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

- a. Nineteen (19) of the subject parcel's twenty (20) acres are assessed as *residential excess acreage* but should be assessed as *agricultural* land. *Niemeyer testimony.*
- b. A letter from the Lake County Plan Commission shows the parcel is zoned A-1, Agricultural. *Niemeyer testimony & Petitioners Exhibit 1.*
- c. The subject land is not being farmed. The land cannot be farmed because nineteen (19) acres are under a 70% to 80% wooded canopy. *Niemeyer testimony.*
- d. According to the Lake County Planning Commission and a Lake County ordinance, excess acreage zoned as A-1 cannot be sold or developed as residential land without first being rezoned. *Niemeyer testimony.*

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

- a. The Respondent's representative stated that he does not have the authority to change the valuation rate from residential excess acreage to agricultural unless proof of farming is submitted. *Depp testimony.*

Record

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

- a. The Petition, and all subsequent submissions by the parties.

b. The tape recording of the hearing labeled BTR #166.

c. Exhibits:

Petitioner Exhibit 1: Letter from Ned Kovachevich, Director, Lake County Plan Commission dated August 24, 2004

Petitioner Exhibit 2: Side 1 of the property record card (PRC) for subject property

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: PRC & photograph of subject property, Parcel #010-10-01-0065-0020

Respondent Exhibit 3: Comparison analysis worksheet; Photographs & PRCs for Parcels #010-10-01-0137-0013, #010-10-01-0053-0029, & #010-10-01-0106-0004

Board Exhibit A: Form 139 L

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

14. The most applicable laws, court cases and regulations 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 Board of Tax Commissioners*, 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 Township 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.

- d. “In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.” Indiana Code § 6-1.1-4-13(a).
15. The Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. This conclusion was arrived at because:
- a. The Petitioners contend that nineteen (19) acres of the subject parcel should be re-classified from *residential excess acreage* to *agricultural land* and priced accordingly.
 - b. The Petitioners contend that the zoning classification of the property dictates the pricing method to be used in valuing the parcel. The Petitioners submitted a letter from Ned Kovachevich, Director of the Lake County Plan Commission, stating that the subject property was zoned A-1, Agricultural. *Niemeyer testimony & Petitioners Exhibit 1*. Consequently, the Petitioners claim that the land must be assessed as agricultural land.
 - c. The Petitioners’ reliance on the zoning classification of the subject land is misplaced. Indiana Code § 6-1.1-4-13(a) provides that land shall be assessed as agricultural “only when it is devoted to agricultural use.” The Petitioners presented testimony that they did not actually farm any of the land at issue because of the wooded canopy. *Neimeyer testimony*. Moreover, there is no evidence that the Petitioners devoted any portion of the subject land to any other type of agricultural use. Therefore, I.C. § 6-1.1-4-13(a) prohibits assessment of the subject land as agricultural.
 - d. However, the Petitioners contend that it would be inequitable to assess the subject land as residential, because the applicable local zoning ordinance prohibits them from developing or selling their excess acreage for residential use unless they first have the land rezoned. *Neimeyer testimony*.
 - e. It is possible that the zoning restrictions identified by the Petitioners may affect the market value-in-use of the subject land for its current use. However, the solution does not lie in valuing the land based upon a different use. Instead, the Petitioners were required to demonstrate how the zoning restrictions affected the market value-in-use of the subject land. The Petitioners did not present an appraisal, a comparison of sales of otherwise comparable parcels of land or any other evidence to quantify how the zoning restrictions at issue affected the market value-in-use of the subject land.
 - f. Based upon the foregoing, the Petitioners failed to establish a prima facie case for a change in assessment.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

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.