

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00098
Petitioners: Richard J. & Gayle A. Schulfer
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0053-0013
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 December 2, 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioners' property tax assessment for the subject property was \$198,000 and notified the Petitioners on March 23, 2004.
2. The Petitioners filed a Form 139L on April 20, 2004.
3. The Board issued a notice of hearing to the parties dated February 14, 2005.
4. Special Master Peter Salveson held a hearing on March 17, 2005, in Crown Point, Indiana.

Facts

5. The subject property is located at 13406 W. 161st Avenue, Lowell. The location is in West Creek Township.
6. The subject property is a single-family home and additional structures on 6.063 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 \$52,300 Improvements \$145,700 Total \$198,000.
9. Assessed value requested by Petitioners:
Land \$35,411 Improvements \$136,800 Total \$172,211.

10. Persons sworn in as witnesses at the hearing:
Richard Schulfer, Owner,
Everett Davis, Assessor/Auditor, DLGF.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the assessment is incorrect because the condition of the 500 square foot structure is not considered. The Petitioners contend that the structure is not livable, has no working electricity or plumbing and is currently used for storage. The Petitioners provided photographic evidence that shows the unfinished interior of the house. *Schulfer testimony; Petitioner Exhibit 3.*
 - b. The Petitioners contend that the grade of the structure should be changed to "E". The Petitioners presented photographic samples from the Indiana Assessment manual to support this contention. *Schulfer testimony; Petitioner Exhibit 3.*
 - c. The Petitioners contend that the 5.063 acres in excess of the one acre home site is not buildable property and that it is zoned agricultural. *Schulfer testimony; Petitioner Exhibit 2.*
 - d. The Petitioners contend that the 5.063 acres currently assessed as excess residential acreage was previously assessed as agricultural land. The Petitioners requested that this land be valued as agricultural land. The Petitioners testified that the land has not been used for agricultural purposes since 2001. *Schulfer testimony.*
12. Summary of Respondent's contentions concerning the assessment:
 - a. The Respondent contends that the structure in question is being valued in "poor" condition; it could conceivably be considered "very poor". The Respondent also noted that the 500 foot structure is being valued as unfinished living space with an adjustment for not having plumbing. No adjustment was made for the lack of electricity. *Davis testimony; Respondent Exhibit 2.*
 - b. The Respondent testified that the structure could probably be considered a low "D" grade, but contended that for a dwelling to have a grade of "E" it would not have a foundation and would be of very poor construction. *David testimony.*
 - c. The Respondent presented three comparable sales and contended that these comparables support the total current assessment. This comparison did not include the additional 500 square foot structure. *Davis testimony; Respondent Exhibit 4.*

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 1313,
 - c. Exhibits:
 - Petitioner Exhibit 1: Form 139L Petition,
 - Petitioner Exhibit 2: Explanation, overview, photos of land, and statement from local farmer (four pages),

- Petitioner Exhibit 3: Statement, photos from assessor’s manual,
photos of structure in question (eight pages),
 - Petitioner Exhibit 4: Notice of Final Assessment,
 - Respondent Exhibit 1: Form 139L Petition,
 - Respondent Exhibit 2: Subject property record card,
 - Respondent Exhibit 3: Subject property photo,
 - Respondent Exhibit 4: Top 20 comparables worksheet,
 - Respondent Exhibit 5: Comparable property record cards and photos,
 - Board Exhibit A: Form 139 L Petition,
 - Board Exhibit B: Notice of Hearing,
 - Board Exhibit C: 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, by preponderance of the evidence, 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 at 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. Wash. 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 Petitioners did not provide sufficient evidence to support the Petitioners’ contentions. The Respondent was not required to rebut the Petitioners’ contentions. This conclusion was arrived at because:

Grade/Condition

- a. The Petitioners testified that the structure under appeal had no water, no plumbing fixtures, no electricity, and the septic had been disconnected. The building is used for storage.
- b. Because of these deficiencies, the Petitioners contend that the subject structure should be graded “E”. In support of this contention, the Petitioners submitted interior and exterior photographs of the subject and photographs of “E” grade dwellings from the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. at 45, 46 (incorporated by reference 50 IAC 2.3-1-2). *Petitioner Exhibit 3*.

- c. "Grade" is the classification of an improvement based on certain construction specifications, design, and quality of materials and workmanship. GUIDELINES, glossary at 9.
- d. A taxpayer must offer "specific evidence tied to the descriptions of the various grade classifications" to make a prima facie case. *Sollers Point Co. v. Dep't of Local Gov't Fin.*, 790 N.E.2d 185, 191 (Ind. Tax Ct. 2003).
- e. Photographs of a property are insufficient evidence to support the Petitioners' request for a grade change to a dwelling. The Petitioners did not prove that the current grade on the 500 square foot structure was incorrect.
- f. The Respondent testified that the property record card shows that a deduction has been made for the unfinished interior and the lack of plumbing fixtures; however, no deduction was made for the lack of electricity. The condition rating of the structure is poor.
- g. "Poor condition" is described as a dwelling with definite, obvious structural deterioration. "It is definitely undesirable or barely usable." It needs extensive repair or maintenance on painted surfaces, the roof, the plumbing and the heating system. There is extensive deferred maintenance. GUIDELINES, ch.3 at 62.
- h. "Very poor condition" is described as conditions in the structure render it unusable. It is extremely unfit for human habitation or use. There is extremely limited value in use and it is approaching abandonment. The structure needs major reconstruction to have any effective economic value. GUIDELINES, ch.3 at 63.
- i. The Petitioners presented photographs showing the interior of the house was uninhabitable. However, once additional deductions are made for the lack of heat and electricity, this issue has been disposed of as there are already deductions for interior finish and plumbing. No further decrease is warranted for condition.

Land

- j. The land is currently assessed as 1 acre residential home site and 5.063 acres residential excess acreage.
- k. The Petitioners requested that the 5.063 acres of land currently assessed as excess residential acreage be assessed as agricultural land, as it is zoned agricultural. However, the Petitioners testified that the land was no longer used for agricultural purposes after 2001.
- l. Residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential home site base rate and the excess acreage base rate established by the township assessor. GUIDELINES, ch. 2 at 72. The fact that the land was assessed as agricultural in previous years is not probative evidence for the current assessment. Such evidence is insufficient to establish an error in the current assessment. In original tax appeals, each assessment and each tax year stands alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, unless otherwise indicated, evidence submitted for one petition or tax year will not be used as evidence for a different petition or tax year. *Id.*

- m. As of the March 1, 2002, assessment date, the subject property could not be assessed as agricultural land.

Conclusions

- 16. The Petitioners did not establish a prima facie case. However, the Respondent noted that a deduction for lack of electricity had not been made. The Board notes that a deduction for lack of heat was also omitted and determines that these additional deductions should be made for the lack of electricity and the lack of heat.

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

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>.