

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-012-02-1-5-00005
Petitioners: Richard A. & Jo Ann Harbit
Respondent: Department of Local Government Finance
Parcel #: 004-04-05-0101-0001
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 November 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$210,700. 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 22, 2004.
3. The Board issued a notice of hearing to the parties dated July 20, 2004.
4. A hearing was held on August 25, 2004 in Crown Point, Indiana before Special Master S. Sue Mayes.

Facts

5. The subject property is located at: 181 E 153rd Avenue, Crown Point, Eagle Creek Township, Lake County.
6. The subject property includes a single-family residence, barn and 6.5 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed Values of subject property as determined by the DLGF are:
Land \$46,800 Improvements \$163,900 Total \$210,700

Assessed Values requested by the Petitioners per the Form 139L petition are:
Land \$ 32,180 Improvements \$60,875 Total \$93,055

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

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
 - a. The Petitioners contend that the subject parcel was valued as a home site with excess acreage. *Harbit testimony & Petitioners Exhibit 1, page 10.*¹ According to the Petitioners, the land was purchased as farmland and is used as farmland to pasture horses. *Harbit testimony.* The Petitioners contend that two (2) cuttings of hay are taken from this land each year. *Id.* The Petitioners therefore contend that the subject land should be valued as agricultural land rather than excess acreage and that the total value should be in the amount of \$32,200. *Id.*
 - b. The Petitioners contend that both the neighbor on the east of the subject property and the neighbor across the street from the subject property pasture horses and cut hay. *Harbit testimony.* Both of these neighbors are assessed for farmland, not excess acreage. *Id.; Petitioners Exhibit 1 Pages 8 & 9.*
 - c. The Petitioners further contend that, prior to the 2002 reassessment, the subject property was assessed as farmland. *Harbit testimony & Petitioners Exhibit 1 page 10.* According to the Petitioners, the use of the subject land remains unchanged from the last assessment. *Id. Harbit testimony.*
 - d. The Petitioners also contend that the subject house is a modular home. *Harbit testimony.* The Petitioners submitted a purchase contract and warranty worksheets to show that the house is a modular home and to verify its location. *Harbit testimony & Petitioners Exhibit 1 Pages 13 - 16.* The price of the home came to \$54,372 after amenities were added. *Harbit testimony.*
 - e. The Petitioners contend that other modular houses within a twenty (20)-block radius of the subject structure are valued as mobile homes. *Harbit testimony.* The

¹ The Petitioners submitted 27 pages of documents together with three photographs of the subject property. The Petitioners did not label the Exhibits in a cohesive manner other than to assign page numbers. The Board will refer to all of the documents and photographs as Petitioners Exhibit 1, with additional appropriate references for identification, such as citations to page numbers.

Petitioners submitted property record cards (PRCs) for five (5) of those houses. *Petitioners Exhibit 1 Pages 17-26*. The Petitioners also submitted a worksheet comparing the average cost per square foot of the five (5) houses to the cost per square foot of the subject house. *Harbit testimony & Petitioners Exhibit 1 Page 27*. According to the Petitioners, the average cost per square foot for the five (5) comparable houses is \$30.50 while the cost per square foot for the subject house is \$74.13. *Id.* The Petitioners contend that the subject home should be valued in the same manner as the five (5) comparable houses. *Harbit testimony*.

12. Summary of Respondent's contentions:

- a. After reading the Form 139L and the notes from the informal hearing, the Respondent agreed that the land should be valued as agricultural land. *Depp testimony*. The Respondent stated that a drive-by inspection had confirmed that the land was being used for agricultural purposes. *Id.* The Respondent testified that the total value of the subject land should be changed to \$32,200. *Id.*
- b. The Respondent contends that the Real Property Assessment Guidelines for 2002-Version A (Guidelines) indicate that modular houses should be valued as regular stick built houses. *Depp testimony & Respondent Exhibit 4*. However, the Respondent also testified that there is a grey area in his mind regarding whether to value modular houses as residential dwellings with a lowered grade or as mobile homes. *Depp testimony*.
- c. The Respondent testified that, in order to bring the valuation of the subject house in line with the valuation of similar houses in the area, it should be assessed as a doublewide mobile home. *Depp testimony*. The Respondent testified that assessment as a double-wide mobile home would lead to an assessed value of \$52,600 for the house itself, exclusive of the basement and porches, which should be valued separately. *Id.* The total improvement value would then be \$118,600. *Id.* According to the Respondent's representative, that amount would be more in line with the subject property's value and the value of similar properties in the area. *Id.*

Record

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

- a. The Petition, and all subsequent submissions by either party.
- b. The tape recording of the hearing labeled BTR #200.
- c. Exhibits:
 - Petitioners Exhibit 1 Page 1: Exhibit coversheet
 - Petitioners Exhibit 1 Page 2: Notice of final determination
 - Petitioners Exhibit 1 Pages 3, 4 & 5: Form 139L
 - Petitioners Exhibit 1 Page 6: Summary of arguments
 - Petitioners Exhibit 1 Page 7: Outline of evidence for land value

Petitioners Exhibit 1 Page 8: 2002 PRC for Parcel #004-04-05-0042-0011
Petitioners Exhibit 1 Page 9: 2002 PRC for Parcel #004-04-05-0042-0008
Petitioners Exhibit 1 Page 10: 1995 PRC for Parcel #004-04-05-0101-0001
Petitioners Exhibit 1 Page 11: 2002 PRC for subject property
Petitioners Exhibit 1 Page 12: Outline of evidence for home value
Petitioners Exhibit 1 Pages 13 - 16: Purchase contract for house & options
Petitioners Exhibit 1 Pages 17 & 18: 2002 PRC for Parcel #004-04-05-0112-0009
Petitioners Exhibit 1 Pages 19 & 20: 2002 PRC for Parcel #004-04-05-0112-0006
Petitioners Exhibit 1 Pages 21 & 22: 2002 PRC for Parcel #004-04-05-0112-0013
Petitioners Exhibit 1 Pages 23 & 24: 2002 PRC for Parcel # 004-04-05-0112-0012
Petitioners Exhibit 1 Pages 25 & 26: 2002 PRC for Parcel #004-04-05-0112-0011
Petitioners Exhibit 1 27: Worksheet for cost per square foot comparison
Petitioners Exhibit 1: Three (3) photographs of the subject property

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: PRC & photograph for subject property

Respondent Exhibit 3: Comparison analysis worksheet; PRCs & photographs for
Parcels # 004-04-05-0045-0033, 004-04-05-0042-0021, &
004-04-05-0111-0001

Respondent Exhibit 4: Real Property Assessment Guidelines for 2002 – Version
A, pages 3 & 4

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 and court cases are:

- a. A Petitioner seeking review of a determination of the 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.

Issue 1 – Land

15. The Petitioners provided sufficient evidence to support their contentions that the land was improperly assessed using an incorrect land type. This conclusion was arrived at because:
 - a. The Petitioners presented undisputed testimony that their land was used to pasture horses and that they took two (2) cuttings of hay each year in support of their contention that the land should be valued as a homesite with farmland rather than as a homesite with excess acreage. *Harbit testimony*. As a result, the Petitioners contend that the total land assessment should be \$32,180. *Harbit testimony*.
 - b. The Respondent agreed that the subject land - other than the portion attributable to the homesite - was used for agricultural purposes and that it should be assessed as agricultural land rather than residential excess acreage. *Depp testimony*.
 - c. The Respondent further agreed that the total land assessment should be \$32,200².

Issue 2 – Improvements

16. The evidence supports the conclusion that the value of the dwelling was overstated. This conclusion was arrived at because:
 - a. The Petitioners presented evidence that their house was assessed differently than five (5) other modular type homes within a twenty (20) block radius of the subject property. *Harbit testimony & Petitioners Exhibit 1 Pages 12 - 27*.
 - b. The Respondent agreed that the subject house was overvalued in comparison to other houses in the area. *Depp testimony*. The Respondent agreed that the house should be valued as a doublewide mobile home in order to bring its assessed value in line with the assessed values of similar houses in the area. *Id*. The Respondent presented testimony that, if assessed in that manner, the house should be valued at \$52,600 and the total value of all improvement should be \$118,600. *Depp testimony*. The Respondent further presented testimony that such an assessment would be more in line with the subject property's value. *Id*.
 - c. While the parties appear to have agreed that the subject house should be valued under the Guidelines as a double wide mobile home, they did not explicitly agree on the

² While the parties did not enter into a formal written agreement, their respective positions indicate that there is no dispute concerning the proper value of the subject land. The difference of \$20 between the two values may be attributed to the rounding of numbers.

ultimate value of the house or of the improvements in total. The Petitioners requested a value of \$60,875 for all improvements in their Form 131 petition – an amount significantly less than the \$118,600 proposed by the Respondent.

- d. The Petitioners did not present any probative evidence to support their requested value, or to establish any particular value at all.
- e. The Petitioners presented evidence that five (5) modular homes in the vicinity of the subject property were assessed as mobile homes and valued between \$42,700 and \$62,500. *Petitioners Exhibit 1 Pages 17-26*. The homes ranged from 1404 square feet to 1998 square feet. *Petitioners Exhibit 1 Pages 17-27*. However, the Petitioners did not explain how the other modular homes compared to the subject property beyond their location and square footage, nor did the Petitioners explain how they arrived at their requested value.
- f. The Respondent similarly failed to explain the basis for its proposed valuation of \$118,600 for all improvements. The Respondent simply testified that, if assessed as a doublewide mobile home, the house itself, exclusive of the basement or porches, should be valued at \$52,600. The Respondent apparently then added that number to the existing valuation of things such as the basement porches and barn. However, the Respondent did not explain the methodology it used to arrive at the value to which it testified.
- g. Nonetheless, it is undisputed that the current assessment of the subject improvements is incorrect and that the improvements have some value. Given that the Respondent has conceded a value in the amount of \$118,600 and that the Petitioners have not demonstrated that such value is erroneous, the Board finds that the evidence supports an assessed value in the amount of \$118,600.

Conclusions

Issue 1 – Land

- 17. At the hearing, the Petitioners and the Respondent agreed that the 5.50 acres shown, as residential excess acreage on the subject's PRC should be valued as farmland. The parties also agreed that the total land assessment should be \$32,200. The Board finds in favor of Petitioners.

Issue 2 – Improvements

- 18. The Respondent conceded that the subject house should be valued as a doublewide mobile home in order to bring its assessed value in line with its true value and the value of similar houses in the area. The Respondent conceded that the assessed value of all improvements should be lowered from \$163,900 to \$118,000. The Petitioners did not present any probative evidence to establish a different value.

Final Determinations

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

Land \$32,200 Improvements \$118,600 Total \$150,800

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.