

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-012-02-1-5-00015
Petitioners: Sigmund & Karen Krebs
Respondent: Department of Local Government Finance
Parcel #: 004-04-05-0048-0003
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 April 15, 2004. The Department of Local Government Finance (the "DLGF") determined that the assessment for the property is \$216,400 and notified 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 October 1, 2004.
4. Special Master Kathy J. Clark held the hearing in Crown Point on November 4, 2004.

Facts

5. The subject property is located at 16712 Mississippi Street, Lowell. The location is in Eagle Creek Township.
6. The subject property consists of a one-story brick, single-family dwelling, various farm buildings, and 113.11 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 \$124,000 Improvements \$92,400 Total \$216,400.
9. Assessed value requested by Petitioners:
Land \$100,000 Improvements \$80,000 Total \$180,000.

10. Persons in attendance and sworn as witnesses at the hearing:
For Petitioners — Sigmund Krebs, Owner
For Respondent — Anthony Garrison, Assessor/Auditor.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
- a) This farmland is not as productive as some other farmland and is priced too high per acre. *S. Krebs testimony.*
 - b) Five acres of the land was formerly railroad lines. The tracks are gone, but the land is all brush and ruts. Another twenty-five acres of the land is wetlands and cannot be farmed. *S. Krebs testimony.*
 - c) There are three utility towers on the land. These negatively impact the market value of the land because no one wants to live near them because of possible health effects and the noise. *S. Krebs testimony.*
 - d) The dwelling has only one chimneystack and two fireplace openings. *S. Krebs testimony.*
 - e) The barn is in bad shape. The grain bins and silo are not used. No one would pay money for these structures. *S. Krebs testimony.*
13. Summary of Respondent's contentions in support of the assessment:
- a) With the exception of a 1 acre home site, a 3.03-acre portion, and 1.50 acres that are dedicated public road, the remaining tillable farmland has a base per acre rate of \$1,050 that is based on average per acre productivity. The acreage under question on the subject property then received a productivity influence factors between 81 percent and 98 percent based on mapped soil types. *Respondent Exhibit 2; Garrison testimony.*
 - b) The property currently has 3.03 acres of Land Type 5, which is non-tillable land. This acreage is the old railroad land and is receiving a 60 percent deduction for this reason. *Respondent Exhibit 2; Garrison testimony.*
 - c) After hearing the Petitioner's statement that there are three utility towers on the land, it is the Respondent's position that there should be a .125-acre section of land removed from the tillable acreage land for each tower. This land (.375 acres) should have no assessed value. *Garrison testimony.*
 - d) The grade and condition of the outbuildings has been sufficiently recognized by D grade and poor or fair condition. *Garrison testimony.*

- e) Respondent did not contest that there are only two fireplace openings. *Garrison testimony*.

Record

14. 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 450,
- c) Exhibits:

Petitioner presented no exhibits,
Respondent Exhibit 1 — Form 139L,
Respondent Exhibit 2 — Subject property record card,
Respondent Exhibit 3 — Photographs of subject property,
Board Exhibit A — Form 139L,
Board Exhibit B — Notice of Hearing,

- d) These Findings and Conclusions.

Analysis

15. 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) 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.

Land

16. There is sufficient evidence to support only one of Petitioners' contentions about errors concerning the land value. This conclusion was arrived at because:
- a) The Petitioners contend the land is over-assessed because (1) a portion of the land is untillable as a result of the old railroad lines, (2) there are power lines and towers on the property, (3) twenty-five acres are wetlands, and (4) the land has low productivity.
 - b) The statewide agricultural land base rate value for the 2002 general reassessment is the average market value in use of \$1,050. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 102. The agricultural land assessment formula values farmland, in part, based on the productivity of each parcel's soil resources. *Id.*, ch. 2 at 109. The Petitioners' land is valued at the base rate of \$1,050. Then productivity factors were applied. A portion of the land identified as old railroad lines, 3.03 acres, is assessed as untillable and a 60 percent negative influence factor was applied to it. There is no probative evidence that establishes this valuation is wrong or what the value should be. *Meridian Towers*, 805 N.E.2d 478.
 - c) The Respondent accepted that three utility towers are located on the land and recommended that the value of .375 acres of tillable land be removed from the assessment. The exact location of those towers, however, was not specified or established by the evidence from either party. That fact is important because some of the land has a higher adjusted value per acre than other parts of the land. Rather than deny Petitioner any adjustment for the towers because he failed to prove exactly what soil type they are on, the .375 acres for the towers should be removed from the land with the lowest value, which is the 34 measured acres with an adjusted rate of \$851 per acre.
 - d) The Petitioners did not present any probative evidence to support their contentions regarding the existence of wetlands and lower soil productivity. The Petitioners offered only conclusory statements. Conclusory statements are of no value in proving a case. *See generally, Heart City Chrysler v. State Bd. Of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - e) Petitioners failed to provide probative evidence to support their contentions in regard to the other land issues. Therefore, except for the land with utility towers, the remaining acreage will remain unchanged.

Improvements

17. The Petitioners presented sufficient evidence to support one of their contentions concerning the improvement issues. This conclusion was arrived at because:
- a) The Petitioners' contend that the barn, grain bins, and silo are not assessed correctly because they are in poor condition and are not used. The property record shows that the condition rating is poor. No probative evidence was submitted to show that a further reduction was warranted. No change is required on those improvements. *Meridian Towers*, 805 N.E.2d 478.
 - b) The Petitioner testified that there was only one stack with two fireplace openings, not three. The Respondent failed to offer any rebuttal to this issue. The testimony is sufficient to prove that the assessment for the dwelling should only include value for two fireplace openings. Thus, \$1000 must be removed from the dwelling's fireplace value. GUIDELINES, app. C at 7.

Conclusions

18. The Board determines that .375 acres of tillable land and one fireplace opening must be removed from the assessed value.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the value should be changed to reflect the corrections noted above.

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.