

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00027A
Petitioners: William C. Jr. & Ruth Herr
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0024-0003
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. It finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on November 3, 2003, in Lake County, Indiana. By agreement of the parties, petitions on parcels 010-10-01-0024-0003 and 010-10-01-0024-0025 were heard in a consolidated hearing.
2. The Petitioners filed a Form 139L on November 3, 2003.
3. The Board issued a notice of hearing to the parties dated June 1, 2004.
4. A hearing was held on July 20, 2004, in Crown Point, Indiana before Special Master Michael R. Schultz.

Facts

5. The subject property is located at 9804 W. 219th Avenue, Lowell in West Creek Township.
6. The subject property is a one acre homestead with additional farm buildings and agricultural land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value as determined by the Department of Local Government Finance (DLGF):
Land \$93,100 Improvements \$306,200 Total: \$399,300
9. Assessed value requested by Petitioners:
Land \$67,100 Improvements \$109,500 Total: \$176,600

10. Attorney Donald R. O'Dell represented petitioners at the hearing.
11. The following persons were present and sworn as witnesses at the hearing:
 - For Petitioners: William C. Herr, property owner
Rick Niemeyer, West Creek Township Assessor
 - For Respondent: Sharon Elliott, Cole-Layer-Trumble, Staff Appraiser
Larry Vales, Cole-Layer-Trumble, Staff Appraiser

Issue

12. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) Homestead value is overstated. *O'Dell argument; Niemeyer testimony.* Market value of homestead would not exceed \$10,000. *Petitioners Exhibit 2.*
 - b) No septic, sewer or water utility. *Petitioners Exhibit 2; O'Dell argument.*
 - c) Patio and porches should be on parcel 010-10-01-0024-0003, not this one. *O'Dell argument.*
 - d) Neighborhood factor shouldn't apply to commercial agricultural operations. *Petitioners Exhibit 2; O'Dell argument; Niemeyer testimony.*
 - e) Neighborhood factor is lower on other farms in area. *Petitioners Exhibit 2; Niemeyer testimony.*
 - f) Greenhouses are personal property not real property. *Petitioners Exhibit 2; O'Dell argument.*
13. Summary of Respondent's contentions in support of assessment:
 - a) Respondent's Exhibit 3 shows comparables of similar values. *Elliott testimony; Vales testimony.*
 - b) Respondent's Exhibit 4 establishes that the neighborhood factor can apply to agricultural improvements. *Vales testimony.*
 - c) Respondent admitted it was difficult to find an adequate number of initial comparable data to come up with homesite values for Petitioners' parcels. *Vales testimony; Elliott testimony.*
 - d) The subject property was assessed using the guidelines of the state and is appropriately valued under current law.
14. After the presentation of evidence, the parties agreed that a Form 133 (Correction of Error) would be issued by the West Creek Township Assessor to correct Petitioners' issues c and f. The agreement between Petitioners and Respondents is a decision between these parties that the Board will accept. The acceptance of their agreement should not be construed as a determination regarding those items in this appeal.

Record

15. The official record for this matter is made up of the following:
 - a) The Petition and all subsequent pre-hearing submissions by either party,
 - b) The tape recording of the hearing labeled Lake County 119,

- c) Exhibits:
 - Petitioners Exhibit 1 - Form 139L Petition,
 - Petitioners Exhibit 2 - Summary of Petitioners arguments,
 - Petitioners Exhibit 3 - Written outline of evidence explaining its relevance,
 - Petitioners Exhibit 4 - Notice of Assessment,
 - Petitioners Exhibit 5 - Notice of Final Assessment,
 - Petitioners Exhibit 6 - Copy of valuation record,
 - Petitioners Exhibit 7 - Pictures of greenhouse,
 - Petitioners Exhibit 8 - Copy of greenhouse invoice,
 - Respondent Exhibit 1 - 139L Petition,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 – Comparables Results-Top 3 with property record cards and photos,
- d) These Findings and Conclusions.

Analysis

- 16. The most applicable governing cases:
 - a) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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.

- 17. Petitioners provided insufficient evidence to support the their contentions that the assessment should be lower. This conclusion was arrived at because:
 - a) Petitioners did not prove that it was improper to apply a neighborhood factor to this property. The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Appendix B page 9 states “Apply the neighborhood factor to all residential and agricultural improvements within the neighborhood as indicated on the property record card.” If there is some reason that this provision does not apply in this case, Petitioners failed to explain what it might be. *Indianapolis Racquet Club*, 802 N.E.2d at 1022.
 - b) Petitioners offered opinions that the neighborhood factor for the subject property is too high when compared to those for nearby areas. They also offered opinions that the homesite value for the subject property was too high when compared to other

nearby properties. Such conclusory statements and opinions are not probative evidence. *Whitley Prods. V. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- c) Mr. Herr's estimate that the market value would be \$10,000 for the homesite does not constitute probative evidence of market value. Such conclusions are not sufficient basis to lower an assessment. *Sterling Mgmt. v. State Bd. of Tax Comm'rs*, 730 N.E.2d 828, 838 (Ind. Tax Ct. 2000) (taxpayer's conclusory statements do not constitute probative evidence).
- d) Petitioners did not offer any probative evidence that the assessed value for the land and neighborhood factor should be changed. Therefore, the burden of going forward with evidence in support of the current assessment for the land and neighborhood factor never shifted to Respondent. *Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E. 2d 928, 932 (Ind. Tax Ct. 2001).

Conclusion

- 18. Petitioners failed to establish a prima facie case. The evidence that was presented did not support the Petitioners' claim. The Board finds in favor of Respondent.

Final Determination

Petitioners failed in their burden to prove that there is any assessment error or what the correct assessment for this property should be. In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed (except for the parties' agreed Correction of Error pertaining to removal of the patio, porch and greenhouses from this parcel as explained in paragraph 14).

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.