

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-016-02-1-5-00291
Petitioners: Alvin H. & Janet S. Fasel
Respondent: The Department of Local Government Finance
Parcel: 006-27-0370-0001
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. The Department of Local Government Finance (the DLGF) determined that the assessment for the subject property is \$105,700 and notified the Petitioners on March 26, 2004.
2. The Petitioners filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated November 15, 2004.
4. Special Master Kathy J. Clark held the hearing on December 15, 2004, in Crown Point.

Facts

5. The subject property is located at 945 E. 10th Street, Hobart. The location is in Hobart Township.
6. The subject property consists of a two-story, brick and frame dwelling, a pole barn and a utility shed. The improvements are located on 5.981 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land \$33,100 Improvements \$72,600 Total \$105,700.
9. The Petitioners did not request a specific assessed value.

10. Persons sworn in as witnesses at the hearing:
Alvin H and Janet S. Fasel, Owners,
Diane Spenos, Assessor/Auditor.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a. The land has been used for farming since 1890. Mr. Fasel's brother-in-law currently farms it on a "share" basis. *Petitioner Exhibit 4; Janet Fasel testimony.*
 - b. A small portion of the property (.652 of an acre) was split off in 2001 so that the Petitioners' son-in-law could build a home on it. *Petitioner Exhibit 6; Janet Fasel testimony.*
 - c. The assessed value of the 4.981 acres of farmland is too high. *Janet Fasel testimony.*
12. Respondent contends that the 4.981 acres of land had been classified as residential excess acreage prior to the informal hearing. After that hearing, the 4.981 acres was reclassified as tillable farmland at a per acre value of \$1,050. *Respondent Exhibit 2; Spenos testimony.*

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 1137,
 - c. Exhibits:
 - Petitioner Exhibit 1 - Form 139L,
 - Petitioner Exhibit 2 - Summary of Petitioners' Arguments,
 - Petitioner Exhibit 3 - Outline of evidence explaining its relevance,
 - Petitioner Exhibit 4 - Farm Rental Income and Expenses, Form 4835-2002,
 - Petitioner Exhibit 5 - Notice of Assessment of Land and Structures for 4/26/96,
 - Petitioner Exhibit 6 - Preliminary plat dated 5/24/00 and old plat,
 - Petitioner Exhibit 7 - Photographs of dwelling and outbuildings,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photographs,
 - Respondent Exhibit 4 - Comparable analysis sheet,
 - Respondent Exhibit 5 - Property record cards and photographs of comparables,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Notice of Hearing,

Board Exhibit C - Hearing 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 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.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case. This conclusion was arrived at because:
- a. Currently, 4.981 acres of land is being assessed as tillable agricultural land at the rate of \$1,050 per acre. The remaining one acre of the subject property is being valued at the home site rate for the subject’s neighborhood.
 - c. “The 2002 general reassessment agricultural land value utilizes the land’s current market value in use, which is based on the productive capacity of the land.... The statewide agricultural land base rate value for the 2002 general reassessment will be the average market value in use...or \$1,050 per acre.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, ch. 2 at 99-100.
 - d. The Petitioners failed to provide any probative evidence that the current land assessment is incorrect.
 - e. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- 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>.