

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-012-02-1-5-00006
Petitioners: Dan L. & Pamela Dailey
Respondent: Department of Local Government Finance
Parcel #: 004-04-05-0027-0020
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 January 5, 2004, in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioners' property tax assessment for the subject property was \$123,000. 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 21, 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: 9268 East 165th Avenue, Hebron, Eagle Creek Township, Lake County.
6. The subject property is a single-family residence located on 5.016 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:

Land \$41,600 Improvements \$81,400 Total \$123,000

9. Assessed Value as requested by Petitioners per the Form 139L petition:
- Land \$24,528 Improvements \$81,400 Total \$105,928
10. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.
11. Persons sworn in at hearing:
- For Petitioners: Pamela R. Dailey, Property Owner
- For Respondent: David M. Depp, Senior appraiser for Cole-Layer-Trumble (CLT),
for DLGF

Issues

12. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a. The neighborhood factor for the subject property is erroneous. Two (2) parcels on the north side of the street have the homesites valued at \$27,500 per acre and have a neighborhood factor of 1.00. Two (2) parcels on the south side of the street have the homesites valued at \$17,500 per acre and have a Neighborhood Factor of .91. The assignment of neighborhood factors appears to be arbitrary. *Dailey testimony & Petitioner Exhibits 5 thru 9.*
 - b. The value of the land is overstated. A comparable property with the same land type as designated on the subject property's PRC is valued at \$1750 less per acre. *Dailey testimony & Petitioner Exhibit 9.*
13. Summary of Respondent's contentions in support of the assessment:
- a. Neighborhood factors were established according to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. Neighborhood delineations were approved by the monitor, Crowe, Chizek, and by the DLGF, before being used by CLT. *Depp testimony.*
 - b. The Respondent asked the Petitioner how the Petitioner's land was being used. The Petitioner stated the land was being used to pasture horses. *Dailey testimony.* The Respondent then indicated, that the property, now valued as excess acreage, should be valued as agricultural, tillable land. The Respondent testified that its preliminary calculations indicated that such a change would lower the value of the subject land from \$41,600 to \$29,200. *Depp 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 BTR #208.

c. Exhibits:

Petitioners Photo 1: 165th from County line Road
Petitioners Photo 2: Lake County Coon Hunter Club
Petitioners Photo 3: Dailey residence
Petitioners Photo 4: Benetich residence
Petitioners Photo 5: Schneegas residence

Petitioners Exhibits 1, 2 & 3: Form 139L Petition
Petitioners Exhibit 4: Notice of Final Assessment
Petitioners Exhibit 5: Map
Petitioners Exhibit 6: Property record card (PRC) for Parcel #004-04-05-0027-0020

Petitioners Exhibit 7: PRC for Parcel # 004-04-05-0027-0015

Petitioners Exhibit 8: PRC for Parcel #004-04-05-0028-0015

Petitioners Exhibit 9: PRC for Parcel #004-04-05-0028-0016

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: PRC for subject property

Respondent Exhibit 3: Comparison analysis worksheet with PRCs and photographs for five (5) comparable parcels: Parcel #004-04-05-0045-0033, Parcel #004-04-05-0042-0021, Parcel #004-04-05-0102-0001, Parcel #004-04-05-0041-0008, & Parcel #004-04-05-0041-0048

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign in Sheet

d. These Findings and Conclusions.

Analysis

15. The most applicable laws, court cases and regulations are:

a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West*

- v. Washington Township 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.
 - d. The 2002 general reassessment was performed in accordance with a system of mass appraisal governed by the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (“GUIDELINES”). Pursuant to that system, all property within a township must be established as part of neighborhood. GUIDELINES, Ch. 2 at 8. Township assessors are required to define neighborhoods according to various factors, including, among other things: distinctive geographic boundaries, any manmade improvements that significantly disrupt the cohesion of adjacent properties, and sales statistics. *Id.*
 - e. Land values for standard size lots in each neighborhood are determined through an analysis of actual sales within the neighborhood or comparable neighborhoods. *See GUIDELINES*, Ch. 2 at 11-15.
 - f. Assessors are required to engage in a similar process to account for the impact on the value of improvements caused by the physical, economic, governmental and social characteristics of a neighborhood. *See GUIDELINES*, Appendix B at 8-9. Assessors are required to examine property sales within the neighborhood between January 1, 1998 and December 31, 1999 and to determine the portion of each sale price attributable to improvements. *Id.* The assessors are then required to divide that amount by the depreciated replacement cost new of the improvements to arrive at a neighborhood factor. *Id.* The GUIDELINES require assessors to multiply the depreciated replacement cost new by the neighborhood factor determined by the process described above to arrive at the total value of each residential improvement being assessed.

Issue 1 – Neighborhood Factor

16. The Petitioners did not provide sufficient evidence to support their contention that the neighborhood factor applied to the subject property is erroneous. This conclusion was arrived at because:

- a. The Petitioners do not contest the value of the subject improvements. In fact, Ms. Dailey testified that the subject improvements were valued accurately. *Dailey testimony*. Instead, the Petitioners focus solely on the value of their land.
- b. As explained above, the neighborhood factor is used to account for the effect of various characteristics on the value of *improvements* within a neighborhood. *See, supra*, GUIDELINES, Appendix B at 8-9. Thus, even if incorrect, the neighborhood factor at issue in this case had no effect on the assessment of the Petitioners' *land*.
- c. Moreover, even if the neighborhood factor were relevant to the Petitioners' claims, the Petitioners have failed to present a prima facie case that the Respondent applied an erroneous neighborhood factor to the subject property.
- d. The Petitioners provided PRCs for four (4) parcels. Two (2) of the parcels, like the subject property, are on the north side of 165th Avenue and have a neighborhood code of 00401 – the same as the subject property. The other two (2) parcels are on the south side of the street and have a neighborhood code of 00402. *Petitioner Exhibits 6 thru 9*. The Petitioners contend that the parcels on the north side of the street have a higher neighborhood code, and hence a higher value, than the parcels on south side of the street. *Dailey testimony & Petitioner Exhibits 6 thru 9*.
- e. The Petitioners assert that there is nothing to justify the difference in neighborhood factors, because the properties all are: rural, within an area served by the same school corporation, and within the same driving distance from town. *Dailey testimony*.
- f. The evidence clearly demonstrates that the difference between the neighborhood factors of the properties on the north and south sides of 165th Avenue is at least partly attributable to the fact that they are located within separate assessment neighborhoods. While the factors identified by the Petitioners may be relevant to the determination of neighborhood boundaries, they are not dispositive of the issue. *See, supra*, GUIDELINES, Ch. 2 at 8. The Petitioners did not address other key factors, such as the presence of manmade improvements that significantly disrupt the cohesion of adjacent properties and sales statistics. *Id.*
- g. Moreover, even if one were to assume that all of the properties identified by Petitioners should be assessed as part of the same neighborhood, the Petitioners did not demonstrate what the appropriate neighborhood factor should be. To do so, the Petitioners were required to present at least some evidence to demonstrate the impact on the value of improvements caused by the physical, economic, governmental and social characteristics of the neighborhood. *See, supra*, GUIDELINES, Appendix B at 8-9. Instead, the Petitioners have merely pointed to the fact that the properties in question were assigned different neighborhood factors. This does nothing to show which of those factors is correct, or if an entirely different factor is appropriate.

- h. Consequently, the Petitioners have failed to present a prima facie case that the Respondent applied an incorrect neighborhood factor in assessing the subject property.

Issue 2 – Land Value

- 17. The evidence supports the Petitioners’ contention that the subject land was incorrectly valued. This conclusion was reached because:
 - a. The subject parcel is currently assessed as containing a one-acre homesite and 4.016 acres of residential excess acreage. *Respondent Exhibit 2.*
 - b. The Petitioners compared their assessed land value to the assessed values of three (3) neighboring parcels. Two (2) of the parcels consist of a homesite and agricultural lands. The third consists of a homesite and residential excess acreage. *Petitioner Exhibits 7 & 8.* The Petitioners contended that the bases rate for the homesite and excess acreage for the subject land were significantly less that the corresponding rates for the same types of land on properties across the street.
 - c. Ms. Dailey testified that the subject parcel was being used to pasture horses. *Dailey testimony.* The Respondent agreed that the subject land, other than the homesite, should be valued as agricultural, tillable land rather than excess acreage. *Depp testimony.*
 - d. The Respondent testified that its preliminary calculations indicated that a change from excess acreage to agricultural land would lower the total land value from \$41,600 to \$29,200. *Depp testimony.*
 - e. The undisputed evidence supports valuing as agricultural land the portion of the subject land that is currently valued as excess acreage.
 - f. However, the Petitioners failed to make a prima facie case for any further reduction. While the Petitioners presented evidence that properties across the street with the one acre homesites were valued using a lower base rate than the base rate applied to the homesite portion of the subject land, the Petitioners have presented no evidence to demonstrate which rate more truly reflects the fair market value-in-use of the subject land.

Conclusions

Issue 1 – Neighborhood Factor

- 18. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Issue 2 – Land Value

19. The undisputed evidence supports a finding that the portion of the subject land currently valued as excess acreage should be valued as agricultural, tillable land.

Final Determinations

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that there is no change to the neighborhood factor. The Board also determines that the residential excess acreage be valued as agricultural, tillable land.

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.