

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-016-02-1-4-00229
Petitioner: Edward A. Klug
Respondent: Department of Local Government Finance
Parcel: 006271700170054
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 the tax assessment for the subject property and notified the Petitioner on March 26, 2004.
2. The Petitioner filed the Form 139L on April 26, 2004.
3. The Board issued the notice of hearing to the parties dated March 7, 2005.
4. Special Master Kay Schwade held the hearing in Crown Point on April 7, 2005.

Facts

5. The subject property is located at 615 W. 37th Avenue, Hobart.
6. The subject property is a mobile home park on 11.324 acres of land.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of subject property as determined by the DLGF:
Land \$521,600 Improvements \$86,300 Total \$607,900.
9. The assessed value requested by Petitioner:
Land \$6,450 Improvements \$21,500 Total \$27,950.
10. Petitioner was represented at the hearing by Gary K. Matthews, attorney. Edward Klug, owner, and Stephen Yohler, assessor/auditor, were present and sworn as witnesses at the hearing.

Issue

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) In 1999, the City of Hobart, in conjunction with the State of Indiana, purchased 1.189 acres of land across the street from the subject property and along the frontage of 37th Avenue from the Petitioner. *Klug testimony; Petitioner Exhibit 4, p. 3.* The market value for the 1.189 acres determined by the appraisers appointed by the court was \$51,800, which is \$43, 566 an acre. *Klug testimony; Petitioner Exhibit 4, p. 3, 20.* Because this valuation was accepted by the property owner, this establishes the price agreed upon between a willing buyer and seller. *Klug testimony; Petitioner Exhibit 4, p. 3.*
 - b) Other comparable properties in the area are valued less than the subject property. *Klug testimony.*
 - c) Cressmoor Country Club is a golf course with improved roadways and is located at 601 N. Wisconsin Street. It abuts the subject property to the southeast fronting on Wisconsin Street and 37th Avenue. The land value for Cressmoor Country Club is \$931 an acre. *Klug testimony; Petitioner Exhibit 4, p. 4.*
 - d) Neimeyer Airport is located at 3600 Lake Park Avenue and is valued at \$341 an acre. *Klug testimony; Petitioner Exhibit 4, p. 5.*
 - e) Crown Hill Cemetery is located at 255 36th Avenue and is adjacent to the subject property. The cemetery has improved interior roadways. The land is valued at \$3,850 an acre. *Klug testimony; Petitioner Exhibit 4, p. 5.*
 - f) Horseshoe Mobile Home Park is located at 7799 E. Ridge Road and is 3 blocks east of the subject property, fronting on 37th Avenue. Horseshoe Mobile Home Park is approximately 6 to 7 acres with improved roadways. It is newer than the subject property. The land for Horseshoe Mobile Home Park is valued at \$3,683 an acre. *Klug testimony; Petitioner Exhibit 4, p. 5.*
 - g) In 2004, the City of Hobart purchased a portion of the northwest corner of the subject property that fronts on Ridge Road, Wisconsin Street, and 37th Avenue for \$36,630 an acre. This transaction was not a condemnation proceeding. The transaction was the result of an offer made and accepted between buyer and seller. *Klug testimony.*
 - h) The requested land value is based on the land values of comparable properties. The fairest value would be the 2004 purchase price of \$36,630 paid by the City of Hobart. *Klug testimony.* The most accurate value of the subject property is its sale price and the most current sale of land is a third of the current assessment. *Edwards argument.*

- i) The Petitioner does not own or rent any mobile homes. The Petitioner does not own the mobile homes currently assessed. Those mobile homes are personal property mobile homes. They should be assessed to the mobile home owners. *Klug testimony; Petitioner Exhibit 4, p. 2.*
- j) Prior to the reassessment, the subject property was classified as a type “D” mobile home park. Because of the reassessment, the classification was changed to a type “C” mobile home park. *Klug testimony.*
- k) The roadways are more than 30 years old. They need repairs for cracking and potholes. The mobile home park has not had any upgrades or improvements in 30 years. *Klug testimony.*
- l) The mobile home park has only 60 sites. Of the 60 mobile home sites, 17 sites are concrete slab and the remaining 43 sites are dirt sites. *Klug testimony.*

12. Summary of Respondent’s contentions in support of the assessment:

- a) There is an error in the land value calculation. The base rate for the 5.488 acres should have been the useable undeveloped rate (\$113,035 per acre) rather than the primary rate (\$125,595). The Petitioner is entitled to this correction regardless of other issues. On that basis, the land value should be reduced to \$442,040. *Yohler testimony; Respondent Exhibit 4.*
- b) Mr. Yohler lacks personal knowledge regarding the development of land values in Lake County or why the land value for Horseshoe Mobile Home Park is different from the subject property’s land value. One possible reason for the difference in land value between the subject property and Horseshoe Mobile Home Park is that the properties may be in different neighborhoods. *Yohler testimony.*
- c) It must have been assumed that the Petitioner owned the mobile homes. If the mobile homes are not owned by the Petitioner, the DLGF has no objection to removing the mobile homes from the real property assessment. *Yohler testimony.*
- d) Mr. Yohler cannot explain why the mobile home park classification type was changed from “D” to “C”. It is possible that the prior classification type of “D” was incorrect. *Yohler testimony.*
- e) The memo on the property record card indicates 90 sites, but the number of sites actually used to calculate the mobile home park value is 60. *Yohler testimony; Respondent Exhibit 1, p. 2.*

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 1383,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Form 139L,
 - Petitioner Exhibit 2 – Form 11, Notice of Assessment,
 - Petitioner Exhibit 3 – Notice of Final Assessment,
 - Petitioner Exhibit 4 – A summary of the argument with attachments,
 - Petitioner Exhibit 5 – The subject property record card dated December 18, 2003,
 - Petitioner Exhibit 6 – The subject property record card dated April 21, 2004,
 - Petitioner Exhibit 7 – The subject property record card dated December 15, 2004,
 - Petitioner Exhibit 8 – Documents regarding the July 2004 purchase of land and improvements,
 - Petitioner Exhibit 9 – Notice of Assessment dated January 21, 2005,
 - Petitioner Exhibit 10 – Ten photographs of the surrounding area,¹
 - Respondent Exhibit 1 – The subject property record card,
 - Respondent Exhibit 2 – A photograph of the subject property,
 - Respondent Exhibit 3 – Land value calculation and neighborhood summary sheet,
 - Respondent Exhibit 4 – A proposed land value change,
 - Board Exhibit A – Form 139L,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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).

¹ After the hearing, Petitioner attempted to submit additional evidence. The cover letter for this submission is dated April 14, 2005, and the postmark is dated April 15, 2005. These items include an aerial map, additional written comments from Petitioner, and photographs showing the street in front of the Cressmor Mobile Home Park and the Horseshoe Mobile Home Park. This additional evidence was not requested by the administrative law judge or the Board. Consequently, it will not be accepted as part of the record for this case. See LSA Document #05-277(E), Section 10.

- 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. Petitioner provided sufficient evidence to support his contentions that no mobile homes should be included in this assessment and that the assessment should include only 60 mobile home sites. Petitioner did not provide sufficient evidence to support his contentions regarding the land value or mobile home park classification type. This conclusion was arrived at because:

Land Value

- a) Real property is assessed based on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter Manual) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b) For the 2002 reassessment, an assessment is to reflect value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different time, the Petitioner is required to provide some explanation how those values demonstrate, or are relevant to, the subject property’s value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) The Petitioner based his land value claim on the 1999 purchase price of 1.189 acres located across the street from the subject property and the 2004 purchase price of the northwest corner of the subject property. Although the 1999 purchase is close to the proper valuation date, the purchase resulted from condemnation proceedings. Condemnation proceedings are used to ease the acquisition of land for governmental uses and do not necessarily represent the most likely purchase price of property because the typical motivation between the buyer and seller is lacking.
- d) The 2004 purchase has the appearance of an arm's length transaction because a fair offer was made and accepted. However, because the Petitioner did not establish that the 2004 purchase price of \$36,630 an acre was reflective of the value on January 1, 1999, the 2004 sale is not viewed as probative evidence. *Id.*
- e) The Petitioner also relied on the assessments of comparable properties as a basis for the land value argument. For such evidence to be probative, however, the properties must be established to be truly comparable with probative evidence and explanation. *Id.* Of the properties offered by the Petitioner as comparable properties, only one property is a mobile home park like the subject property. The other properties are a golf course, a cemetery, and an airport. The Petitioner failed to provide the necessary facts and explanation to establish these properties as comparables. *Id.*
- f) The Petitioner failed to make a prima facie case regarding land value. Therefore, the Respondent's duty to rebut or to support the land value with substantial evidence was not triggered. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g) Nevertheless, the Respondent agreed that the land value should change because 5.488 acres should have been valued as usable undeveloped land. This proposed change would reduce the land value to \$442,040. Although the parties did not stipulate or reach agreement on this land value (because Petitioner sought something much lower), the Board will accept the proposed reduction.

Mobile Homes

- h) A mobile home is assessed as real property if it is on a permanent foundation located on land owned by the homeowner. GUIDELINES, ch. 4 at 3. Mobile homes are assessed as annually assessed mobile homes if they are not on a permanent foundation and not located on land owned by the homeowner. 50 IAC 3.2-2-2.
- i) The Petitioner does not own the mobile homes currently assessed as real property, nor are they on permanent foundations. The Petitioner presented sufficient evidence to establish that the mobile homes currently included in his assessment should be assessed as annually assessed mobile homes to the mobile home owners. The burden has shifted to the Respondent to present evidence rebutting

the Petitioner's evidence. *American United*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.

- j) The Respondent did not offer any evidence to rebut the Petitioner's evidence. The Respondent's only witness admittedly has no knowledge about why the mobile homes were assessed as real property to the Petitioner. If the Petitioner does not own the mobile homes, there is no objection to removing the assessment for the mobile homes.
- k) The assessment must be changed to remove the mobile homes.

Site Cost (Grade)

- l) The cost for each mobile home site is determined primarily by its size and grade. A "C", or average, type mobile home park is built for permanent occupancy accommodating mobile homes up to 60 feet long and a few double wide homes with utility buildings, an office, and possibly recreation facilities. The price range for each C site should be between \$4,670 and \$5,770. GUIDELINES, app. G at 39.
- m) A "D", or low cost, type mobile home park is developed for transient or semi-permanent occupancy usually having car drawn trailers up to 45 feet long with limited planning and facilities and water and sewer hookups. The price range for each D site should be between \$3,190 and \$4,130. *Id.*
- n) The Petitioner claimed that his mobile home park classification should be "D" rather than "C" because the classification was "D" prior to the 2002 reassessment. The prior classification, however, is not probative evidence for this case. That fact does not help to establish what the current classification should be. Each tax year stands on its own. *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- o) The Petitioner did not present probative evidence that the current classification is wrong or to establish what it should be. He presented evidence that the subject property has 17 concrete sites and 43 dirt sites and the subject property was not improved in 30 years. The Petitioner failed to present probative evidence that the subject property is used for semi-permanent or transient occupancy rather than permanent occupancy, that the maximum mobile home size accommodated by the subject property is 45 feet, or that the subject property had limited planning or limited facilities. The Petitioner did not present probative evidence to show that the "C" classification type is incorrect and that a "D" classification type would be correct.
- p) Furthermore, the property record card shows that the current assessment is based on a value of only \$2,910 for each site, which is considerably less than the lowest

value for a D site.² Thus, changing the grade to D would not result in any reduction in the assessment. The Petitioner did not make a prima facie case on this issue.

Number of Sites

- q) A memorandum note on the property record card indicates "90 pads for trailers." This note is an inconsequential error. The undisputed evidence establishes that the subject property has only 60 mobile home sites at this property. The evidence also shows that the true tax value of the mobile home park was calculated using 60 sites, for a true tax value of \$58,100. Therefore, the assessment will not change because of this issue.

Conclusions

16. The Petitioner did not make a prima facie case regarding the issue of land value. Nevertheless, the Respondent acknowledged a land value error and presented a lower proposed land value that reduces the land value from \$521,600 to \$443,500. The Board will accept the change proposed by the DLGF on this issue.
17. The Petitioner made a prima facie that the mobile homes should be removed from this assessment. The Respondent did not rebut the Petitioner's case. The Board finds in favor of the Petitioner.
18. The Petitioner did not make a prima facie case regarding the issue of mobile home park classification type. The Board finds in favor of the Respondent.
19. The Petitioner established that there is an error on the information in the memorandum section of the property record card. The notation that the property has "90 Pads for trailers" is wrong and must be removed. This correction, however, will not result in an assessment change.

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

² Respondent did not claim that the assessment should be increased to correct this error. Therefore, the Board will not order such a change.

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. 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 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>.