

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-044-02-1-5-00097
Petitioner: Leroy Fouse
Respondent: Department of Local Government Finance
Parcel #: 011-11-10-0128-0002
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. On March 31, 2004, the Department of Local Government Finance (the DLGF) sent a Notice of Department Assessed Value Determination increasing the assessment for the subject property to \$184,500.
2. The Petitioner filed a Form 139L on August 9, 2004.
3. The Board issued a notice of hearing to the parties dated March 3, 2005.
4. A hearing was held on April 5, 2005, in Crown Point, Indiana before Special Master Alyson Kunack.

Facts

5. The subject property is located at 6204 East 141st Avenue, Crown Point, in Winfield Township.
6. The subject property is a residence on five acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$55,000 for the land and \$129,000 for the improvements for a total assessed value of \$184,500.
9. The Petitioner requested an assessed value of \$26,000 for the land and \$129,000 for the improvements for a total assessed value of \$155,000.

10. Leroy Fouse, the property owner, and John Toumey, representing the DLGF, appeared at the hearing and were sworn as witnesses.

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The Petitioner's first Notice of Assessment indicated the assessed value of the subject property was: land \$26,600 and improvements \$136,400, for a total assessed value of \$163,000. This notice was dated October 17, 2003. *Fouse testimony & Board Exhibit A, page 4.*
 - b) The Petitioner then received a second notice this time from the Department of Local Government Finance (DLGF) indicating a new assessed value was determined for the subject property due to an incorrect neighborhood factor. The new assessment was: land \$55,500 and improvements \$129,000, for a total assessment of \$184,500. *Fouse testimony & Board Exhibit A, page 5.*
 - c) The Petitioner testified that the subject property is 320 feet x 681 feet, and consists of a one acre homesite and four residential excess acres. The subject has trees and lowland. The house is 33 years old and has not been significantly updated. *Fouse testimony.*
 - d) According to the Petitioner, there are two properties that adjoin the subject. The corner property (Kasch property) has frontage on both 141st Avenue and Grand Blvd. The second property (Fasnacht property) is square with more frontage than the subject. *Fouse testimony & Petitioner Exhibits 1, 3, and 4.* The Petitioner argued that there are no differences in these properties. The properties are not in different neighborhoods. Therefore, according to the Petitioner, the assessment on the subject property should be reduced or the assessment on the neighboring property should be increased. *Fouse testimony.*
 - e) The Petitioner also argued there was an error on the subject property record card because it shows the property having all utilities. *Fouse testimony & Petitioner Exhibits 1 & 2.* According to the Petitioner, the subject property only has a septic tank and well water.
11. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent testified that the property was originally assessed with the wrong neighborhood classification. According to the Respondent, when the correct neighborhood was used, the land value increased as a result from \$26,500 to \$55,000. *Toumey testimony & Board Exhibit A, pages 4 and 5.*
 - b) CLT established the market value of the property as of January 1, 1999. The land base rate for a one acre homesite in Neighborhood #01113 is \$37,500 and for excess

acreage it is \$4,500 per acre. The Respondent noted that the Petitioner indicated that the property was not farmed so, according to the Respondent, the subject property is properly classified as excess acreage. *Id.*

- c) The Respondent further testified that the Kasch property is in the same neighborhood as the subject and, therefore, is assessed the same. The Fasnacht property, however, is in a different neighborhood even though it borders the subject. Therefore, the Fasnacht property has a different base rate for the land - \$19,000 for a one acre homesite and \$1,900 per acre for residential excess acreage. *Toumey testimony.*
- d) The Respondent also argued that Petitioner failed to bring in market value information to support any other market value. *Id.*
- e) Finally the Respondent contended that having all utilities means that a property has all utilities regardless if it is well and septic. *Id.*

Record

12. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled Lake Co. # 731.
- c) Exhibits:

- Petitioner Exhibit 1: Sketch of subject and nearby properties
 - Petitioner Exhibit 2: Subject PRC
 - Petitioner Exhibit 3: PRC for Fasnacht property
 - Petitioner Exhibit 4: PRC for Kasch property

- Respondent Exhibit 1: Form 139 L Petition
 - Respondent Exhibit 2: Subject PRC
 - Respondent Exhibit 3: Photographs of subject
 - Respondent Exhibit 4: PRCs for comparable properties
 - Respondent Exhibit 5: Version A – Real Property Assessment Guideline, Glossary, page 36

- 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

13. 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 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.
14. The Petitioner failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a) The Petitioner received a Form 11 dated October 17, 2003, assessing the subject property for \$26,600 for the land and \$136,400 for the improvements for a total assessed value of \$163,000. A second Notice of Assessment was sent on March 31, 2004, increasing the land value to \$55,500 and reducing the improvement value to \$129,000. The reason for this change was due a change in the “neighborhood assignment.” *See Board Exhibit A, pages 4 and 5.*
 - b) The Petitioner argued that the new assessment was too high. According to the Petitioner, neighboring properties were not assessed as high as his property. In support of this argument, the Petitioner submitted a sketch of the area and two PRCs for two properties that adjoin the subject property, the Kasch and Fasnacht properties. *Petitioner Exhibits 1, 3, and 4.* The Petitioner argued that given the proximity of the subject and the two adjoining properties, they cannot be in different neighborhoods. *Fouse testimony.*
 - c) For assessment purposes, neighborhoods are not determined by geographic proximity alone. Neighborhoods are defined according to: (1) common development characteristics; (2) the average age of the majority of improvements; (3) the size of lots or tracts; (4) subdivision plats and zoning maps; (5) school and other taxing

districts boundaries; (6) distinctive geographic boundaries; (7) any manmade improvements that significantly disrupt the cohesion of adjacent properties; (8) sales statistics; and (9) other characteristics deemed appropriate to assure equitable determinations. See VERSION A – REAL PROPERTY ASSESSMENT GUIDELINE (GUIDELINES), ch. 2 at 8.

- e) The Petitioner showed that the subject property and the two comparable properties bordered each other and that the parcels originated from a single large tract of land. However, that is insufficient to show that the neighborhood classification was in error. The Petitioner did not discuss any other factors used in determining neighborhoods, nor did he present any market value evidence showing that the land base rates themselves were in error. Thus, the Petitioner has failed to raise a prima facie case that the assessment was incorrect.
- f) Furthermore, the change in values between the two assessment notices is not proof of an error in the assessment. The Petitioner’s unsupported statements that the land value should be what it was on the first notice are not enough to show an error. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119 (Ind. Tax 1998).
- g) Where the Petitioner has not supported his 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 Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).¹

Conclusion

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

Final Determination

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

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

¹ The Petitioner also argued there was an error on the subject property record card because it shows the property having all utilities. *Fouse testimony & Petitioner Exhibits 1 & 2*. However, septic tanks and wells are utilities.

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.