

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-002-02-1-1-00037
Petitioner: Carlson Farms, Inc.
Respondent: Department of Local Government Finance
Parcel: 002-02-03-0079-0004
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 March 16, 2005. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$146,800 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated February 14, 2005.
4. Special Master Patti Kindler held the hearing in Crown Point on March 16, 2005.

Facts

5. The subject property is located at 18405 Cline Avenue, Lowell.
6. The subject is assessed as a one hundred eighteen acre agricultural property with a dwelling, detached garage and greenhouse assessed on site.
7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of subject property as determined by the DLGF is:
Land \$103,600 Improvements \$43,200 Total \$146,800.
9. The assessed value requested by Petitioner:
Land \$83,600 Improvements \$20,280 Total \$103,880.

10. The following persons were present and sworn as witnesses at the hearing:
For Petitioner – Carl L. Carlsson, President Carlson Farms,
Carl J. Carlsson, Carlson Farms,
Randall S. Carlsson, Secretary, Carlson Farms,
For Respondent – Diane Spenos, assessor/auditor.

Issues

11. Summary of Petitioner's contentions in support of an alleged error in the assessment:
- a) The acre allocated for the agricultural homesite is too large and causes the land assessment to be too high. *C. L. Carlsson testimony.*
 - b) The 55 percent physical depreciation applied to the subject dwelling is not sufficient to account for its age. The physical depreciation attributed to the dwelling prior to the 2002 reassessment was 70 percent. *C. L. Carlsson testimony.*
 - c) The subject property is currently rented at \$350 a month, or \$4,200 per year. *C. L. Carlsson testimony; Petitioner Exhibit F.* A calculation of the expenses on the rental home including insurance, maintenance, depreciation, and prorated tax for the dwelling and homesite results in total annual expenses of \$5,806. *C. L. Carlsson testimony; Petitioner Exhibit E.* The annual rental income for the subject dwelling is \$4,200, which results in a net loss of income of \$1,606 per year after expenses. *C. L. Carlsson testimony; Petitioner Exhibit F.*
 - d) The depreciation utilized in the rent-loss calculation is based on the life of the house at another 20 years at a value of \$40,500, which results in an annual depreciation of \$2,025 ($\$40,500/20 \text{ years} = \$1,606 \text{ per year}$). The return on the investment for the rental property is negative two percent (-2%), rather than a five percent (5%) return on the investment as realized with most investments. *C. L. Carlsson testimony; Petitioner Exhibit E.*
 - e) Maintenance contracts for the subject rental property provide the cost for carpet and tile replacement at \$1,737, bath flooring and tub repairs at \$2,910, and basement foundation repair at \$7,441.69. *Petitioner Exhibits A, B, C.*
 - f) The continual maintenance to the dwelling is costly to the corporation, but the house cannot be left to deteriorate and fall down. Several tenants have occupied this property. They have been unable to afford the rent along with the high heating bills for the dwelling. *C. L. Carlsson testimony.*
 - g) The house is 105 years old. The current depreciation is only 55 percent. The neighborhood factor is excessive at 1.16. The basement floods. The dwelling is not even in fair condition. It is high maintenance. The interior quality is cheap and poor. *C. L. Carlsson testimony.*

- h) The condition rating of the dwelling should be poor rather than fair for several reasons. The interior walls are some type of wallboard material in lieu of drywall. The house leans. The foundation is caving in and the home is in dilapidated condition. *C. J. Carlsson testimony.*
- i) There are no sales of similar agricultural properties within the immediate neighborhood to account for the neighborhood factor of 1.16 or to use as a comparable to the subject rental home. *C. L. Carlsson testimony.*

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

- a) The Respondent did not offer any evidence regarding the homesite assessment.
- b) The 55 percent depreciation applied to the dwelling is derived from the depreciation charts found in the Guidelines. It is based on the quality "D+2" grade and effective age of 54 years as of January 1, 1999. *Spenos testimony.*
- c) The only comparable agricultural sale of a dwelling in the subject neighborhood that supports the value of the subject property is a ranch home built in 1957 with 1,288 square feet on a 3.5 acre homesite located at 18311 Clark Road in Lowell, Indiana. *Spenos testimony; Respondent Exhibit 4.* The comparable property sold for \$102,500 on March 15, 2001 and has a trended sale price as of January 1, 1999 of \$95,118. *Spenos testimony; Respondent Exhibit 4.*
- d) The subject property is compared to other older farm homes when determining its value and neighborhood factor. It is not compared to nearby homes in a newer subdivision. *Spenos testimony.*

Record

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

- a) The Form 139L Petition,
- b) The tape recording of the hearing labeled Lake County 1221 and Lake County 1222,
- c) Exhibits:
 - Petitioner Exhibit A – A copy of an invoice for carpet and tile replacement,
 - Petitioner Exhibit B – A copy of a contract for bathroom remodeling,
 - Petitioner Exhibit C – A copy of an invoice for the repair of the basement walls,
 - Petitioner Exhibit D – A copy of a worksheet itemizing insurance premiums,
 - Petitioner Exhibit E – A rent loss calculation for the subject property,
 - Petitioner Exhibit F – A copy of a Security Deposit Agreement,
 - Respondent Exhibit 1 – A copy of the Form 139L,
 - Respondent Exhibit 2 – The subject property record card,
 - Respondent Exhibit 3 – A photograph of the subject dwelling, garage and greenhouse,

Respondent Exhibit 4 – The Top 20 Comparables and Statistics with Parcel 002-02-03-0060-0005 highlighted and the corresponding property record card and photograph attached,

Respondent Exhibit 5 – A copy of Schedule G.2 from the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A,

Respondent Exhibit 6 – A copy of Table A-2, Quality Grade Factors for Dwelling Units from REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A,

Respondent Exhibit 7 – A copy of pages 7, 8, 9, 10, 11, 12 from Chapter 1 of the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A,

Board Exhibit A – The Form 139L,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Sign in Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable law is:

- 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.

Homesite Allocation

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) While the Petitioner argued the standard 1 acre homesite allocated to the subject rental home is too large and makes the homesite valuation excessive, the Petitioner

did not present any probative evidence to establish what the correct size of the homesite should be.

- b) The Petitioner bears the burden of showing that the current assessment is incorrect and what the correct assessment should be. The Petitioner has failed to do so. *Meridian Towers*, 805 N.E.2d 475; *Clark*, 694 N.E.2d 1230.
- c) The record does not prove that the homesite size must be changed to any other specific size.

Physical Depreciation

16. The Petitioner provided sufficient evidence to support its contentions on the physical depreciation issue. This conclusion was arrived at because:
- a) The subject dwelling is 105 years old and is graded a D+2. According to the Respondent, the current amount of physical depreciation is based on an effective age of 54 years and a D+2 grade factor.
 - b) The actual age of a structure determines the appropriate amount of physical depreciation. The effective age of a structure is addressed in the condition assigned to it. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).
 - c) Although the Petitioner provided testimony that fair condition was too high for the dwelling, it failed to prove what the correct condition should be. Conclusory opinions are not probative evidence and they have no weight in establishing that the condition should be changed to a lower level. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Nevertheless, the Petitioner presented sufficient evidence showing that the current assessment is incorrect because the Guidelines were misapplied regarding the age of the dwelling. The burden 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.
 - d) The Respondent failed to support the current amount of physical depreciation. The Respondent pointed to the fact that the dwelling's effective age was 54 and, with a D+2 grade factor, maintains that the amount of physical depreciation currently applied is correct. It is clear that there is an error on this point. Based on the depreciation table for D grade homes in fair condition with an actual age of 70 years or more, the appropriate depreciation should be 65%.¹

¹ 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). Even if it is true that the dwelling got 70% physical depreciation for a prior assessment, that fact is not relevant to what the 2002 reassessment should be.

Net Rent Loss Calculation

17. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
 - a) The rent loss calculation shows that the annual rental income is \$4,200, the annual expenses are \$5,806, and the resulting annual net rent loss is \$1,606. While this calculation indicates that the subject property is operating at a loss, the Petitioner did not show how this loss affects the value of the property.
 - b) The Petitioner must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. In this case, the Petitioner failed to explain how those calculations prove the requested value.

Conclusions

18. The Petitioner failed to make a prima facie case regarding the allocation of the one acre homesite. The Board finds in favor of Respondent.
19. The Petitioner made a prima facie case regarding the dwelling's depreciation that was not rebutted or impeached. The Board finds in favor of the Petitioner. The depreciation on the dwelling must be changed to 65%.
20. The Petitioner failed to make a prima facie case based on income calculations. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines the assessment should be changed regarding the application of physical depreciation, but it should not be changed regarding any other claim.

ISSUED: September 12, 2005

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. 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>.