

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00021
Petitioner: Lake County Trust #4320
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0121-0015
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 in Lake County, Indiana. The Department of Local Government Finance ("DLGF") determined that the Petitioner's property tax assessment for the subject property was \$27,900. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L on April 6, 2004.
3. The Board issued a notice of hearing to the parties dated July 21, 2004.
4. A hearing was held on August 26, 2004, in Crown Point, Indiana before Special Master S. Sue Mayes.

Facts

5. The subject property is located at: 12012 W 181st Avenue, Lowell, West Creek Township, Lake County.
6. The subject property is classified as residential with a pole barn.
7. The Special Master did not conduct an on-site inspection of the property.
8. Assessed Values of the subject property as determined by the DLGF are:
Land \$20,300 Improvements \$7,600 Total \$27,900

Assessed Values requested by Petitioner per the Form 139L petition are:
Land \$12,300 Improvements \$7,600 Total \$19,900

9. Persons sworn in at hearing:

For Petitioner: William R. Cooper, authorized representative
 Betty N. Cooper

For Respondent: David M. Depp, Sr., Appraiser for Cole-Layer-Trumble,
 representing the DLGF

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The value of the subject property is overstated. The Petitioner purchased the subject parcel (with a pole barn) and Parcel # 010-10-01-0121-0014 (with a house) in 1994 for \$89,900. *W. Cooper testimony; Petitioner Exhibit 3.*
- b. The subject property does not have a well or septic system but is priced the same as Parcel #010-10-01-0121-0014 which does have a well and septic system. At the informal hearing, the Cole-Layer-Trumble representative stated that the absence of a well and septic system did not make the subject property less valuable than Parcel #010-10-01-0121-0014. *W. Cooper testimony.*
- c. The subject property has a water problem and frequently floods. The subject lot becomes a drainage pond for the farmland behind it. Water runs through the pole barn. The Petitioner has tried to correct drainage problems by constructing a swale. This seems to have corrected about 60% of the problem. Due to the water problems, no further structures can be built on the subject property. *W. Cooper testimony; Petitioner Exhibit 7.*

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

- a. The Respondent agreed that the Petitioner would not be able to build on the subject property. *Depp testimony.*
- b. The Respondent made calculations adjusting the value of the subject property to account for flooding. The Respondent calculated an additional adjustment for "excess frontage," given that the subject lot would not be sold separately from an adjacent lot (Parcel # 010-10-01-0121-0014) also owned by the Petitioner. *Depp testimony.*

- c. The Respondent recommended reducing the land value portion of the assessment to \$10, 200 with the value of the pole barn remaining at \$7,600 for a total value of \$17,800. *Depp testimony.*

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. # 162.
- c. Exhibits:

Petitioner Exhibit 1: Forms from Lake County Trust designating William R. Cooper as the tax appeal representative

Petitioner Exhibit 2: Forms 139L

Petitioner Exhibit 3: Agreement to Purchase

Petitioner Exhibit 4: Notice of Final Assessment & sketch of house

Petitioner Exhibit 5: Sales comparables

Petitioner Exhibit 6: Assessment comparables

Petitioner Exhibit 7: Photographs of flooding, swale & dirt pile

Petitioner Exhibit 8: Photographs showing installation of windows

Respondent Exhibit 1: Form 139L

Respondent Exhibit 2: PRC & photograph of subject property

Respondent Exhibit 3: Comparable sales summary with PRC's & photographs for three (3) comparables

Board Exhibit A: Form 139 L

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 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.
14. The Petitioner provided sufficient evidence to the Petitioner’s contention that the land value for the subject property is overstated. This conclusion was arrived at because:
- a. The Petitioner submitted photographs to show that the subject land is subject to flooding and that the swale constructed by the Petitioner does not fully resolve the problem. *Petitioner Exhibit 7*. The Petitioner testified that the land floods frequently and that water runs through the pole barn. The Petitioner also testified that nothing else could be built on the subject lot because the property would not pass a “percolation test.” *W. Cooper testimony*.
 - b. Based on the Petitioner’s testimony and photographs, the Respondent agreed that the land value should be adjusted to account for flooding. *Depp testimony*.
 - c. The Respondent also testified that the subject lot would not be sold separately from the adjacent parcel owned by the Petitioner, and that an adjustment for “excess frontage” should also be considered. *Depp testimony*.
 - d. Based upon these adjustments, the Respondent calculated that the land should be valued at \$10,200 with the value of the pole barn remaining at \$7,600, for a total value of \$17,800. The current assessment is \$27,900. *Depp testimony & Board Exhibit A*.
 - e. The Petitioner agreed to the values submitted by the Respondent.

Conclusion

15. The parties agreed that the value of the subject land had been overstated and should be lowered \$10,200 with no change to the improvement value. The Board finds in favor of this change to the land value.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed to \$10,200 for the land, with no change to the improvement value of \$7,600, for a new total assessed value of \$17,800.

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. 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>.