

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-002-02-1-5-00091
Petitioner: Carl Aderhold
Respondent: Department of Local Government Finance
Parcel #: 002020301570026
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 October 15, 2003. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$253,100 and notified the Petitioner on March 19, 2004.
2. The Petitioner filed a Form 139L on April 16, 2004.
3. The Board issued a Notice of Hearing to the parties dated July 16, 2004.
4. A hearing was held on August 26, 2004, at 10:51 a.m. in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 171 Island Drive, Lowell, Cedar Creek Township in Lake County.
6. The subject property is a one-story dwelling with 1944 square feet located on a 125' x 133' (16,625 sq. ft.) lot.

7. The Special Master did not conduct an on-site visit of the property.
8. The assessed value of the subject property as determined by the DLGF:
Land: \$46,700 Improvements: \$206,400 Total: \$253,100
9. The assessed value of the subject property as requested by the Petitioner:
Land: \$35,000 Improvements: \$176,000 Total: \$211,000
10. The following persons were present and sworn in at the hearing:
For the Petitioner: Carl W. Aderhold, Owner
For the DLGF: Sharon S. Elliott, Staff Appraiser, CLT for the DLGF

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends the assessed value exceeds the market value of the subject property. The Petitioner requests the land be assessed at \$35,000 and the improvements for \$176,000 for an overall value of \$211,000. *Aderhold testimony; Petitioner Exhibit 3.*
 - b. At the time of the assessment the land in the subject area was less valuable due to the fact that Lake Dale was known as "mud lake" and there were rumors that the lake was a cause of cancer. *Petitioner's Exhibit 6; Aderhold testimony.*
 - c. In support of the contention that the improvement assessment is excessive, the Petitioner presented a homeowner's insurance declaration for March 1, 1999, through March 1, 2000, from Westfield Companies stating the dwelling is insured for \$183,000. *Petitioner's Exhibit 12.* The Petitioner also submitted a letter, dated April 15, 1999, from Diane Novitke, Insurance agent, stating replacement cost of the dwelling is \$183,000. *Petitioner's Exhibit 11 and Aderhold testimony.*
 - d. The Petitioner testified that the subject property does not represent an affluent area that would require a neighborhood factor and local multiplier of 32% above an average (100%) area. *Petitioner's Exhibits 6 & 7; Aderhold testimony.*
12. Summary of Respondent's contentions in support of assessment:
 - a. The subject property is correctly assessed at \$46,700 for the land and \$206,400 for the improvements for a total assessed value of \$253,100. *Elliott testimony.*
 - b. The subject land is valued with the same base rate as the adjoining lots in the neighborhood and has received a negative influence factor of 30% due to excessive frontage. *Elliott testimony.*
 - c. Comparable properties demonstrate the subject property is valued fair and consistent for the subject area. The three comparable properties sold between

November 1999 and June 2000, after being adjusted to reflect the 1999 market the sales ranged from \$111,490 to \$214,405 with assessed values ranging from \$104,500 to \$195,200. *Respondent's Exhibit 4; Elliott testimony.* The Respondent testified that comparable No. 1, 801 S. Lakeview, was the most comparable to the subject property. That property was purchased in June 2000 for \$225,000 and is currently assessed at \$195,000. *Elliott testimony.*

- d. According to the 2002 REAL PROPERTY ASSESSMENT GUIDELINE – VERSION A, APPENDIX C at 25-26, the location multiplier has been established for every county within the State of Indiana. The neighborhood factor is applied to equalize assessments within a neighborhood. *Elliott testimony.*

Record

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

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The tape recording of the hearing labeled Lake Co. #151.
- c. Exhibits:

For the Petitioner:

Petitioner's Exhibit 1 – A copy of the Notice of Final Assessment, dated March 19, 2004.

Petitioner's Exhibit 2 – A copy of page 1 of Form 139L petition.

Petitioner's Exhibit 3 – A copy of page 2 of Form 139L petition.

Petitioner's Exhibit 4 – A copy of page 3 of Form 139L petition.

Petitioner's Exhibit 5 – A copy of the DLGF's Notice of Reappraisal, dated November 23, 2002 and a copy of the Lake County Plan Commission's inspection approval tag, dated November 5, 1999.

Petitioner's Exhibit 6 – A written copy of the Petitioner's argument.

Petitioner's Exhibit 7 – A written copy of the Petitioner's argument.

Petitioner's Exhibit 8 – A copy of the subject property record card sketch of the improvements.

Petitioner's Exhibit 9 – A copy of the subject property record card land data computation.

Petitioner's Exhibit 10 – A copy of the Indiana Insurance policy for November 26, 1997 to November 26, 1998.

Petitioner's Exhibit 11 – A letter from Diane Novitke, Insurance Agent to Carl Aderhold, dated April 15, 1999.

Petitioner's Exhibit 12 – A copy of the Westfield Companies insurance policy for March 1, 1999 to March 1, 2000.

Petitioner's Exhibit 13 – A copy of the Westfield Companies insurance policy for March 1, 2002 to March 1, 2003.

For the Respondent:

Respondent's Exhibit 1 – A copy of the Form 139L petition, dated April 16, 2004.

Respondent's Exhibit 2 – A copy of Carl Aderhold's 2002 property record card.

Respondent's Exhibit 3 – Two exterior photographs of the subject property.

Respondent's Exhibit 4 – A copy of the top 20 comparables and statistics on the subject area and three comparable property record cards and exterior photographs for Michael Flynn, Duane Starzak and Patrick Kelly.

Respondent's Exhibit 5 – Plat map and aerial map with comparable properties highlighted.

Respondent's Exhibit 6 – Five comparable properties for Norman Lotz (2), John Leitzel (2), and Sandra Ames and aerial map highlighting the comparable properties.

Respondent's Exhibit 7 – A plat map with the subject properties highlighted.

d. These Findings & Conclusions.

Analysis

14. The most applicable governing 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 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.

Issue 1 – Land

15. The Petitioner failed to provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. The Petitioner’s contention regarding the land value being overstated was not sufficiently supported with probative evidence. The Petitioner’s testimony that in 1999 the land was located on what was referred to, as “mud lake,” a reputed cause of cancer, does not help the Board determine what the appropriate market value-in-use for the subject property. *See Aderhold testimony*. The evidence presented at the hearing does not support a finding for Petitioner’s requested value of \$35,000.
 - b. The DLGF acknowledged that the perceived difference in value between the adjoining lots and the subject property is likely due to the application of a negative influence factor to the land value calculation.

Issue 2 – Location Cost Multiplier and Neighborhood Factor

16. The Petitioner failed to provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. Petitioner contends that the subject property is not located in an affluent area that requires a neighborhood factor of 121% and a location multiplier of 111%; therefore the two multipliers should be removed from the subject property. *Aderhold testimony*.
 - b. Petitioner did not provide any evidence to support his contention. Petitioner’s conclusory statements that the area is not affluent and the value is too high do not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax 1998)

Issue 3 – Improvement Value

17. The Petitioner failed to provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a. The Petitioner testified that the value of the property should be about \$225,000 with the value of the house at \$170,000. *Aderhold testimony; Petitioner Exhibit 6*. The Petitioner requested \$211,000, with the improvements at \$176,000, on the Form 139L petition. *Aderhold testimony; Petitioner Exhibit 3*.

- b. The Petitioner submitted an insurance policy from Westfield Companies insuring the subject dwelling from March 1, 1999, to March 1, 2000, for \$183,000. *Petitioner's Exhibit 12; Aderhold testimony.* The Petitioner also submitted a letter, dated April 15, 1999, from Diane Novitzke, Insurance Agent that states the replacement cost of the dwelling was determined to be \$183,000. *Petitioner's Exhibit 11.*
- c. Petitioner's primary evidence, insurance policy declaration pages (*Pet'r Ex. 10, 12, 13*) and a letter from an insurance agent (*Pet'r Ex. 11*), were offered to prove that the replacement cost established by the insurance agent was the value that should be assigned to the improvement as the assessed value. *Aderhold testimony; Pet'r Exs. 10-13.* While information about insurance coverage is relevant to a property's market value-in-use, Petitioner simply did not provide enough explanation regarding the policy value to allow the Board to reach the conclusion sought.
- d. Petitioner did not establish that Diane Novitzke was an expert qualified to appraise or otherwise offer an opinion on the value of the property. *Pet'r Ex. 11.* The declaration pages do not explain how the insurance company arrived at their values for the improvements in any manner. *Pet'r Ex. 10, 12, 13.* Without explanation, the insurance policy declaration pages are insufficient to establish a prima facie case regarding the market value of the property.
- e. Respondent also provided an analysis of several properties claimed to be comparable. As Petitioner did not present a prima facie case, the Board need not examine Respondent's evidence.

Conclusions

Issue 1 – Land Value

- 18. The Petitioner failed to present probative evidence sufficient to make a prima facie case. The Board finds in favor of the Respondent.

Issue 2- Location Cost Multiplier & Neighborhood Factor

- 19. The Petitioner failed to present probative evidence sufficient to make a prima facie case. The Board finds in favor of the Respondent.

Issue 3 – Improvement Value

- 20. The Petitioner failed to present probative evidence sufficient to make a prima facie case. The Board finds in favor of the 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

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.