

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 82-030-04-1-5-04727
Petitioner: Lester Hammer
Respondent: Scott Township Assessor (Vanderburgh County)
Parcel #: 07-092-09-266-146
Assessment Year: 2004

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 Petitioner initiated an assessment appeal with the Vanderburgh County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 11, 2005.
2. The Petitioner received notice of the decision of the PTABOA on September 16, 2005.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 6, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 20, 2006.
5. The Board held an administrative hearing on August 14, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner:

Steven Hammer, witness for Lester Hammer.¹

¹ Although Steven Hammer identified himself as the “power of attorney” for the Petitioner, there is no evidence that the property is owned by a corporation for which Mr. Hammer is an officer or employee. Nor is Mr. Hammer a certified tax representative. As such, pursuant to the Board’s rules, Mr. Hammer cannot “represent” the Petitioner, but may appear as a witness on his behalf. David Kent appeared as counsel for the Petitioner.

For Respondent:

Candy Wells, Vanderburgh County Hearing Officer.²

Facts

7. The subject property is a single-family home on a lot measuring .139 acre located at 922 Taversham, Evansville, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$70,000 for the land and \$158,200 for the improvements, for a total assessed value of \$228,200.
10. The Petitioner requested a total assessment of \$200,000.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the property is over-valued based on the inability of the owner to sell the property at a price below the assessed value. In support of this contention, the Petitioner submitted a real estate listing contract dated July 7, 2006, indicating a listing price of \$219,900. *Petitioner Exhibit 2*. According to the Petitioner's witness, the property has been for sale since December of 2005 and there have been no offers to purchase. *S. Hammer testimony*. Prior to listing the property with a realtor, the Mr. Hammer testified, the property was advertised multiple times by the owner. *Id.*
 - b. The Petitioner further argues that the property is over-valued based on its purchase price. According to the Petitioner, the property was purchased in October of 2004 at a sheriff's sale for \$184,126.12. *Petitioner Exhibit 4 and 5*. The Petitioner argues that the sheriff's sale represents an arms'- length transaction because there were many people at the sale and because there is no relationship between the sheriff and the Petitioner. *Kent argument*. The Petitioner's witness admitted, however, that the property was purchased for less than it is worth. *S. Hammer testimony*. The Petitioner expects the property will sell for \$200,000. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that a sheriff's sale of property is not considered an arms'- length transaction and therefore does not represent the market value of the property. *Wells testimony*. The Respondent also argues that the sale falls outside of the January 1, 1999, valuation date for the 2004 assessment year. *Id.*

² Tiffany Collins, Vanderburgh County Deputy Assessor, observed the hearing.

- b. The Respondent further contends that the subject property is properly valued based on the sale of a “comparable” property in the neighborhood. *Wells testimony*. According to the Respondent, a property located at 848 Bainbridge that was built in 2000 and has 2,258 square feet sold in 2005 for \$245,000. *Id.* The Respondent testified that the subject property was built in 2003 and has 2,273 square feet. *Id.*

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 BTR # 6163,
- c. Exhibits:

Petitioner Exhibit 1 - Letter from David Kent to Scott Township Assessor,
Petitioner Exhibit 2 - Listing for property at 922 Taversham Ave., Evansville,
Indiana,
Petitioner Exhibit 3 - Listing contract with Century 21 Donita Wolf Realty and
Lester R. Hammer,
Petitioner Exhibit 4 - Sheriff’s Deed from Brad Ellsworth to Lester R. Hammer,
Petitioner Exhibit 5 - County Sheriff’s official receipt no. 502902 to Lester R.
Hammer for the amount of One Hundred Eighty-Four
Thousand, One Hundred Twenty-Six Dollars and Twelve
Cents (\$184,126.12).

The Respondent submitted no exhibits.

Board Exhibit A - Form 131 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Notice of County Assessor as Additional Party,
Board Exhibit D - Hearing Sign-In Sheet.

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases 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.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The Petitioner contends that the property is over-assessed when compared to the purchase price of the property and to its listing price. In support of this contention, the Petitioner presented the listing information, which shows the list price of the property to be \$219,900 as of July 7, 2006, and the sheriff's deed and receipt, which shows the property was purchased for \$184,126.12 on October 21, 2004. *Petitioner Exhibits 2, 4, and 5.*
 - b. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession, including 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 (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. MANUAL at 5. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. *Id.* “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 guidelines.” *Id.*
 - c. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a

property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*

- d. Here, the Petitioner bases his claim on his inability to sell the property for a price less than the assessed value. Despite his contention, the evidence shows that the Petitioner has the property listed for \$219,900. *Petitioner Exhibit 2*. Further, while he contends that the property has failed to sell, the evidence shows that it had only been listed with a realtor for approximately 60 days at the time of the hearing.³ When questioned, the Petitioner's witness argued that the property will likely sell for \$200,000 and, therefore, the property should be assessed at approximately \$200,000. *S. Hammer testimony*. The Petitioner, however, offered no support for this conclusory statement. A conclusory statement is insufficient to establish a prima facie case of error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1122 (Ind. Tax 1998).
- e. The Petitioner further argues that the amount for which the property was purchased at a sheriff's sale is evidence that the property is over-valued. While an actual sale of a property may be evidence of the property's value, the sale must represent the "fair market value" of the property. "Fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell." *Second National Bank of Richmond v. State*, 366 N.E.2d 694, 696 (Ind. Ct. App. 1977). In other words, a sale does not necessarily indicate the market value of the property unless that sale happens in a competitive and open market under all conditions requisite to a fair sale, in which the buyer and seller are typically motivated. MANUAL at 10. A sheriff's sale purchase of property does not satisfy the conditions of a competitive and open market, and the buyer and seller being typically willing, motivated and under no compulsion to buy or sell. Thus, the purchase price of property obtained in a sheriff's sale is not, by itself, probative evidence of the market value of the property.⁴
- f. Where the Petitioner has not supported the 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).

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

³ The Petitioner's witness testified that the property had been "for sale" since December of 2005, but was only recently listed with an agent.

⁴ We note that even if we were to accept the sheriff's sale as probative evidence of the property's value, the Petitioner presented no evidence relating the 2004 sale to the January 1, 1999, statutory valuation date. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Therefore, regardless of how the property was purchased, the sales value was not probative of the property's value pursuant to *Long*.

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. 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>.