

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00006  
**Petitioner:** Elwood Whitney  
**Respondent:** Department of Local Government Finance  
**Parcel #:** 007-18-28-0114-0015  
**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 December 2, 2003, at Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$272,000 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties dated May 28, 2004.
4. A hearing was held on July 8, 2004, in Crown Point, Indiana before Special Master Kathy J. Clark.

### Facts

5. The subject property is located at: 8627 Beech Avenue, Munster, Indiana.
6. The subject property is a one-story, single-family, ranch style, frame dwelling on slab. It contains four bedrooms and two full baths. The subject sits on a 95 x 127 lot.
7. The Special Master did not conduct an on-site visit of the property
8. Assessed Value of subject property as determined by the DLGF:  
  
Land: \$32,100 Improvements: \$239,900

9. Assessed Value requested by Petitioner: Land: 27,000 Improvements: \$153,000.
10. The following persons were present and sworn in at hearing:

For Petitioner: Elwood Whitney, Owner

For Respondent: Sharon Elliott, Staff Appraiser, CLT

### **Issues**

12. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) The Petitioner paid \$180,000 for the subject property on December 9, 1999. Petitioner contends this amount represents fair market value.
  - b) Petitioner contends that there are nicer homes on his block that are valued lower than his, some as much as \$100,000 less.
  - c) Petitioner's home is frame while comparables are brick built and include finished basements.
  - d) Petitioner's land value is \$7,000 higher than others.
  - e) Petitioner also contends that his house is of lesser value due to the fact that it has a flat roof and that it is in poor condition.
  - f) Petitioner's property sat vacant for three years prior to sheriff's sale. Petitioner contends he has done nothing to the property except cleaning and painting since purchase.
  - g) The Petitioner stated in his 139L filing that his casualty insurance coverage to rebuild/replace the structure is \$343,879.
13. Summary of Respondent's contentions in support of assessment:
  - a) Respondent refutes the validity of the subject's purchase price of \$180,000 due to the fact that it was a sheriff's sale and is not considered to be an "arms-length" transaction by the Indiana Real Property Assessment Guidelines.
  - b) Petitioner's comparables are of assessed values, not verifiable sales.
  - c) Respondent contends that, through use of comparable sales, that the subject's assessed value has been correctly determined.

### **Record**

14. The official record for this matter is made up of the following:
  - a) The Petition and all subsequent pre-hearing submissions by either party.
  - b) The tape recording of the hearing labeled BTR #213.
  - c) Exhibits:
    - Petitioner Exhibit 1: Form 139L Petition
    - Petitioner Exhibit 2: Form 139L - Page 2 Section II

Petitioner Exhibit 3: Form 139L - Page 2 Section II continued  
Petitioner Exhibit 4: Form 11  
Petitioner Exhibit 5: Notice of Final Assessment  
Petitioner Exhibit 6: Assessment of 8650 Beech  
Petitioner Exhibit 7: Assessment of 8642 Beech  
Petitioner Exhibit 8: Assessment of 8630 Beech  
Petitioner Exhibit 9: Assessment of 8641 Beech  
Petitioner Exhibit 10: Assessment of 8617 Beech  
Petitioner Exhibit 11: Assessment of 8624 Beech  
Petitioner Exhibit 12: Assessment of 8620 Beech  
Petitioner Exhibit 13: Assessment of 8620 Beech, p.2  
Petitioner Exhibit 14: Copy of Sheriff's Deed

Respondent Exhibit 1: 139L Petition.  
Respondent Exhibit 2: Subject Property Record Card  
Respondent Exhibit 3: Photo of Subject  
Respondent Exhibit 4: Comparable Sales Analysis  
Respondent Exhibit 5: Comparable Record Card  
Respondent Exhibit 6: Comparable Photo  
Respondent Exhibit 7: Comparable Record Card  
Respondent Exhibit 8: Comparable Photo  
Respondent Exhibit 9: Copy of Sheriff's Deed

d) These Findings and Conclusions.

### Analysis

15. The most applicable governing cases/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. Wash. 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.
- d) 2002 REAL PROPERTY ASSESSMENT MANUAL at 10. Market Value is defined as:
  - The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the

consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

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

- a.) The home was purchased at a sheriff's auction. *Whitney testimony; Pet'r Ex. 14; Resp't Ex. 9.* The Petitioner's purchase of the subject property for \$180,000 cannot be considered a "market sale," or evidence of market value, because the parties were not "typically motivated" as set forth in the definition of Market Value. *See 2002 REAL PROPERTY ASSESSMENT MANUAL at 10.* The sheriff was unusually motivated to sell the property and likely got a price below market value. *Elliott testimony.* Petitioner also stated that the home sat vacant for three years prior to the purchase at auction making it more likely that the seller was unusually motivated. *See Whitney testimony.*
- b.) The Petitioner submitted a group of "property profiles," taken from the DLGF website for neighboring homes on Beech Avenue. *Pet'r Exs. 6-13.* Petitioner claims these documents show that his home is over-assessed in comparison to the neighboring homes. *Whitney testimony.* The Petitioner did not, however, provide sufficient explanation to allow the Board to conclude that the Beech Avenue properties are comparable to the subject property in any way other than proximity. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin., 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002)* (stating that conclusory statement that properties are comparable is not probative evidence, the party must explain how the physical features actually compare).
- c.) Petitioner also contends that his home's value is diminished due to its poor condition and flat roof. *Whitney testimony.* Petitioner did not explain the precise effect that these factors have on the value of the home, and the Board is unable to determine from the record exactly what the reduction in value should be.
- d.) Respondent also submitted a sales comparison sheet, which includes actual market data rather than assessment data in support of the current assessment. *See Resp't Ex. 4.*

**Conclusion**

17. The Petitioner failed to make a prima facie case. The Board finds in favor of Respondent for the total assessed value of \$272,000.

**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: \_\_\_\_\_

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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.**