

REPRESENTATIVE FOR PETITIONERS: Jack C. Birch, Attorney

REPRESENTATIVE FOR RESPONDENT: Patricia Gammieri, Township Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

CHARLES L. AND HELGA H. KITCHEN, )	Petition No.: 43-025-02-1-5-00004
)	
Petitioners, )	Kosciusko County
)	
v. )	Turkey Creek Township
)	
TURKEY CREEK TOWNSHIP )	Parcel: 007-055-019
ASSESSOR, )	
)	
Respondent. )	Assessment Year: 2002
)	

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Appeal from the Final Determination of the  
Kosciusko County Property Tax Assessment Board of Appeals

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**July 28, 2006**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the facts, the evidence, and the arguments of the parties. Having considered the issues, the Board now enters the findings of fact and conclusions of law that follow.

**PROCEDURAL HISTORY**

1. On May 18, 2004, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued an assessment determination for the subject property. On June 17, 2004, Charles L. and Helga H. Kitchen (Petitioners), filed a Form 131 Petition for Review of Assessment, seeking an administrative review by the Board.

Charles L. and Helga H. Kitchen  
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## HEARING FACTS AND OTHER MATTERS OF RECORD

2. On February 8, 2006, Administrative Law Judge Patti Kindler held the hearing in Warsaw, Indiana.
  
3. The following persons were sworn as witnesses at the hearing:
  - For the Petitioners – Jack Birch, Attorney,
  - For the Respondent – Patricia Gammieri, Turkey Creek Township Assessor,  
Laurie Renier, Kosciusko County Assessor,  
Charles A. Ker, Kosciusko County PTABOA,  
Gerald Bitner, Kosciusko County PTABOA,  
Susan Myrick, Kosciusko County PTABOA,  
Richard Shipley, Kosciusko County PTABOA.
  
4. The Petitioners presented the following exhibits:
  - Petitioners Exhibit 1 – Construction disbursement breakdown,
  - Petitioners Exhibit 2 – Certified appraisal report with property record cards and sales disclosure forms for the appraiser’s comparables,
  - Petitioners Exhibit 3 – Property record card, appraisal, and appraisal update for comparable property at 12253 N. Ogden Point Road,
  - Petitioners Exhibit 4 – Property record card for comparable property at 11561 N. Ogden Point Road,
  - Petitioners Exhibit 5 – Copy of final determination issued by the Board for *Craig P. & Elizabeth A. Kloss v. Dept. of Local Gov’t Finance*,  
Petition #45-001-02-1-5-01126,
  - Petitioners Exhibit 6 – Copy of *Garcia v. State Bd. of Tax Comm’rs*, 766 N.E.2d 341 (Ind. 2002).

5. The Respondent presented the following exhibits:
  - Respondent Exhibit 1 – The 1998 and 2002 property record cards, sales disclosure form for the land purchase, three photographs of the original structure, five photographs of the new dwelling, a geographic information system (GIS) plat map, and a GIS aerial map,
  - Respondent Exhibit 2 – Subject Form 130 with original attachments, Notification of Final Assessment Determination (Form 115), property record card, appraisal and survey,
  - Respondent Exhibit 3 – Ten sales disclosure forms from 1997, 1998, and 1999,
  - Respondent Exhibit 4 – Form 133 Petition for Correction of Error.
  
6. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing,
  - Board Exhibit C – Hearing sign-in sheet.
  
7. The subject property is a two-story dwelling located at 11427 N. Ogden Point Road, Syracuse, Indiana.
  
8. The Administrative Law Judge did not conduct an on-site inspection of the property.
  
9. For 2002, the PTABOA determined the assessed value of the property is:
  - land \$228,100            improvements \$1,077,800    total \$1,305,900.
  
10. The Petitioners did not request a specific assessed value on the Form 131 Petition. At the hearing, the Petitioners contended the total assessed value should be between \$950,000 and \$1 million.

## JURISDICTION

11. The Indiana Board conducts an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. All such appeals are conducted under Ind. Code § 6-1.1-15. Ind. Code § 6-1.5-4-1.

## ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. 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).
13. 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”).
14. 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 parties presented the following evidence regarding the neighborhood factor:
- a) The assessment of the subject improvement is wrong because it includes a market adjustment of 254%. *Birch testimony*.<sup>1</sup>
  - b) The improvement on the subject property was built primarily in 1999. The problem with grouping the newly constructed subject property with older neighboring homes is that the depreciation allotted to older homes inflates the neighborhood factor. The current neighborhood factor of 254% resulted in fairly accurate assessed values for most homes in the neighborhood. Nevertheless, because the Petitioners' new home has experienced no depreciation, the factor drastically inflated the value of the subject property above market value. The current assessment is \$300,000 to \$400,000 higher than either the actual construction costs or the certified appraisal. *Id.*
  - c) The Respondent utilized a statistical sampling of ten properties including many older homes with various amounts of depreciation to determine the neighborhood factor. *Gammiere testimony; Resp't Ex. 3.*
  - d) The determination of the neighborhood factor is a problem for the assessing officials. The local neighborhood factors range from 100% to 354%. Properties such as the Petitioners' home on Lake Wawasee received some of the highest market adjustments. The lake front land values should have been set between \$10,000 and \$15,000 per front foot, but they were set at \$4,852 per front foot. This value caused the neighborhood factor to be excessive in order to bring most properties up to their actual market value. If the land values had been properly calculated to reflect market value, then the market adjustment would not be a

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<sup>1</sup> The market adjustment listed on the property record card and referred to by both parties in testimony is more appropriately known as the neighborhood factor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (GUIDELINES), app. B at 8 (incorporated by reference at 50 IAC 2.3-1-2).

factor. *Gammieri testimony*. Sales disclosure forms for properties located on the lake support the argument that the market values of the lake front lots are much higher than reflected in their assessed valuations. *Id.*; *Resp't Ex. 3*.

- e) The neighborhood factors are not accurate simply because the land values are not accurate. *Renier testimony*.

16. The parties presented the following evidence regarding the overall market value-in-use of this property:

- a) The Petitioners purchased the land for \$350,000 in August 1997. *Birch testimony*; *Resp't Ex. 1*. When the Petitioners purchased the property, there was an older house and garage on it. The value was in the land itself, not in these existing older improvements. The old house and garage were razed as part of the new construction contract. *Birch testimony*. The construction costs for the new home were \$646,744.33, which includes everything except the landscaping cost. *Birch testimony*; *Pet'rs Ex. 1*. The combined cost of land and improvements was \$996,744.33. *Birch testimony*.
- b) The Petitioners submitted an appraisal that concluded the value of the subject property was \$950,000 as of December 31, 1999. *Pet'rs Ex. 2*. The appraisal supports the Petitioners' total actual cost data, showing the value of the property was between \$950,000 and \$1 million. *Birch testimony*; *Pet'rs Exs. 1-2*.
- c) A Board final determination issued in 2005 for *Craig & Elizabeth Kloss v. Dep't of Local Gov't Finance* supports the use of market value evidence. "[T]he sale price of a subject property is often the best evidence of that property's market value-in-use." *Pet'rs Ex. 5 at 4*. Additionally, the Indiana Supreme Court approved the use of actual construction costs and market evidence to determine a grade factor. *Birch testimony*; *Pet'rs Ex. 6*.

- d) The Petitioners submitted property record cards of two purportedly comparable properties (the Williams property and the Shugart property). Both of these properties are located on the subject's street and both benefit from some reduction in assessed value for depreciation. *Pet'rs Exs. 3-4*. The disparity between the sale price and the assessment of the comparable properties is largely dependent on whether the property is older and receives depreciation. *Birch testimony*.
  
- e) The Williams parcel is adjacent to the subject property and is assessed at \$1,177,200. The assessment is less than the assessed value of the subject property, even though the Williams property is superior to the subject in construction quality, architectural detail and craftsmanship. A 2002 appraisal for the Williams property estimated its value at \$1,155,000, which is also less than the Petitioners' assessment. The Shugart property is similar to the Petitioners' house in grade and square footage, but received 38% depreciation. The assessments of older, superior neighboring properties demonstrate that the subject assessment is excessive. *Birch testimony; Pet'rs Ex. 3*. The values for larger homes in the neighborhood are in the million-dollar range. The subject property should be valued between \$950,000 and \$1 million. *Birch testimony*.
  
- f) The Respondent contended that there are extra costs beyond the Petitioners' identified construction costs. For example, no allowance for driveways, walks, landscaping, wallpaper, or window treatments was included in the construction disbursement data for the subject property. *Renier testimony*.
  
- g) The PTABOA lowered the grade factor from a "B-1" to "C+1" in an effort to lower the property's value. *Gammiere testimony; Resp't Ex. 4*.

## ANALYSIS

### Issue 1 - Is the neighborhood factor wrong?

17. A neighborhood factor is determined by analyzing sales in each neighborhood. It adjusts the standard depreciation tables to meet market conditions within the neighborhood.

GUIDELINES, app. B at 5.

The neighborhood factor accounts for the impact on value caused by physical characteristics in the neighborhood such as type and layout of streets, availability of support services, and utilities. It also takes into account the economic characteristics such as demand for property and mortgage interest rates; governmental characteristics such as police protection, fire protection, and zoning; and social characteristics such as crime rates, owner-occupant ratios, and family size.

GUIDELINES, app. B at 8.

18. The neighborhood factor is 254% in this case. The Petitioners acknowledged this neighborhood factor resulted in fairly accurate assessed values for older homes in the neighborhood. The Respondent agreed the neighborhood factor applied to the lake front properties was excessive because it was accounting for undervalued land prices.

*Gammieri testimony.*

19. Even though both parties seem to agree that in this case the neighborhood factor caused the assessment to be too high, neither party presented probative evidence to prove what the correct neighborhood factor should be.

20. The burden is on the Petitioners to demonstrate not only error in the assessment, but also what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478. The evidence does not support any change to the current assessment based on this issue.



## Issue 2 - Is the total assessment excessive?

21. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “the 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.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: 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 based on the cost approach. The value established by those guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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 principles. MANUAL at 5; *See Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1081 (Ind. Tax Ct. 2005).
22. For the 2002 reassessment, an assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. Any evidence of value relating to a different time must also explain how it demonstrates, or is relevant to, value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
23. The Petitioners purchased their lake front lot in August of 1997 for \$350,000. Sales occurring within eighteen months of the January 1, 1999, valuation date can be used to determine land values. GUIDELINES, ch. 2 at 8.
24. The parties agreed the home was constructed primarily in 1999. The Petitioners presented evidence that the actual construction costs of the subject improvements were

\$646,744.33 (rounded to \$646,700). Combined with the purchase price of the land, the total cost of the property was approximately \$996,700.

25. An professional, certified appraisal valued the subject property at \$950,000 as of December 31, 1999. *Pet'rs Ex. 2.*
26. Both the actual costs and the appraisal are relevant, probative evidence that support the Petitioners' claim. In this case, the itemized construction costs actually incurred by the Petitioners are the most persuasive evidence. The Petitioners offered substantial proof that the total value of the parcel should be reduced to \$996,700.
27. The Respondent contended the Petitioners' breakdown of actual construction costs did not include items such as driveways and walks, landscaping, wallpaper, or window treatments. The Respondent, however, presented no probative evidence to quantify the costs of these items or establish they would significantly increase the assessed value.
28. In further support of the assessment, the Respondent presented sale disclosure statements from properties sold in 1997, 1998, and 1999. *Resp't Ex. 3.* Sales information regarding comparable properties can be used to demonstrate a property's true tax value. MANUAL at 5. Nevertheless, in the determination of the true tax value of this parcel, the sale prices of comparable properties will not be given more weight than the actual cost or the appraisal.

#### **SUMMARY OF FINAL DETERMINATION**

29. The evidence does not support any assessment change based on problems related to the neighborhood factor. Nevertheless, the evidence submitted by the Petitioners is sufficient to establish that the total assessment should be changed to \$996,700. The Board finds in favor of the Petitioners.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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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. 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](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>.