

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

Petition #s: 83-002-03-1-5-00002
83-002-03-1-5-00003
Petitioners: Robert L. Hein; Kevin E. Kiger
Respondent: Clinton Township Assessor (Vermillion County)
Parcel #s: 002-002-0192-00
002-002-0191-00
Assessment Year: 2003

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Vermillion County Property Tax Assessment Board of Appeals (PTABOA) by written document.¹
2. The PTABOA issued notice of its determination on December 29, 2005.
3. The Petitioners timely filed an appeal to the Board by filing a Form 131 petition with the Vermillion County Assessor on January 25, 2006. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 22, 2006.
5. The Board held an administrative hearing on October 24, 2006, before the duly appointed Administrative Law Judge (ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioners: Kevin E. Kiger, contract purchaser of the subject property

¹ The written document at issue, the Petitioners' Form 130 petition, does not bear a date stamp to indicate when it was filed. *See Board Exhibit A.* The Respondent, however, does not claim that the Petitioners failed to file that petition in a timely manner to contest the March 1, 2003, assessment of the subject property. *See* Ind. Code § 6-1.1-15-1(b) (setting forth the deadlines by which a taxpayer must initiate the appeal process in order for any change in assessment made pursuant to that appeal to be effective in the same assessment year in which the appeal was filed). The Board therefore proceeds on the assumption that the assessment date under appeal is March 1, 2003, because that is the date listed on the Petitioners' Form 130 and Form 131 petitions and on the Form 115 Notification of Final Assessment Determination issued by the PTABOA. *See Board Exhibit A.*

- b. For Respondent: Patricia Richey, Clinton Township Assessor
Kim Major, Vermillion County Assessor

Facts

7. The properties under appeal consist of a single-family residence located at 522 Anderson Street (Lot 29) and an adjoining parcel (Lot 28) of vacant land located in Clinton, Clinton Township in Vermillion County. The Board will refer to the two properties collectively as the “subject property” and to the land portions of those properties as the “subject land” unless otherwise indicated.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value be \$5,100 for the land and \$71,100 for the improvements for Lot 29, and \$3,200 for the land for Lot 28.
10. The Petitioners requested an assessment of \$300 for the land and \$40,000 for the improvements for Lot 29, and \$300 for the land for Lot 28, for a total assessed value of \$40,600.

Issues

11. Summary of the Petitioners’ contentions in support of an error in the assessment:
 - a. The subject property was sold “through a bank on a repossession” for “around” \$25,000 approximately nine (9) years prior to the hearing. *Kiger testimony*.
 - b. The subject land is assessed for significantly more than are several neighboring lots. *Kiger testimony*. In support of this contention, Mr. Kiger submitted copies of tax bills for eight (8) lots owned by Mr. Hein² that are located nearby the subject property and are assessed for \$300 each. *Kiger testimony, Pet’rs Exhibits 3-10*.
 - c. The subject land is located in a flood zone and improvements cannot be constructed upon it. *Kiger testimony, Pet’rs Exhibit 1*.
12. Summary of Respondent’s contentions in support of the assessment:

The Respondent contends that the subject property is assessed fairly. In support of this contention, Ms. Richey testified that the Respondent applied a negative influence factor

² Mr. Kiger testified that “we” own the lots. *Kiger testimony*. Mr. Hein is listed as the owner of the lots on the tax bills offered by the Petitioners. *See Pet’rs Exhibits 3-10*. It is unclear whether Mr. Kiger is buying those lots from Mr. Hein on contract.

of fifty-six percent (56%) to the assessment of the subject land to account for its location in a flood zone. *Richey testimony, Respondent Exhibit 1*

Record

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

- a. The Form 131 petition,
- b. The compact disk recording of the hearing labeled 83-002-03-1-5-00002,3-Hein-10-24-2006,

c. Exhibits:

Petitioners Exhibit 1 – Summary of contention,
Petitioners Exhibit 2 – Copy of Notice of Hearing,
Petitioners Exhibit 3 – Copy of tax bill for parcel 002-021-0010-00,
Petitioners Exhibit 4 – Copy of tax bill for parcel 002-021-0005-00,
Petitioners Exhibit 5 – Copy of tax bill for parcel 002-021-0006-00,
Petitioners Exhibit 6 – Copy of tax bill for parcel 002-021-0016-00,
Petitioners Exhibit 7 – Copy of tax bill for parcel 002-021-0008-00,
Petitioners Exhibit 8 – Copy of tax bill for parcel 002-021-0015-00,
Petitioners Exhibit 9 – Copy of tax bill for parcel 002-021-0009-00,
Petitioners Exhibit 10 – Copy of tax bill for parcel 002-021-0007-00,
Petitioners Exhibit 11 – Copy of Statement of Mortgage Indebtedness filed
September 24, 2001,

Respondent Exhibit 1 – Copy of aerial photograph of subject improvements,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in sheet,
Board Exhibit D – Written authorization for Kevin Kiger to represent Robert L. Hein,³

d. These Findings and Conclusions.

³ Mr. Kiger is not a certified tax representative. Consequently, Mr. Kiger was not authorized to appear before the Board in a representative capacity for Mr. Hein. *See* 52 IAC 1-1-6; 52 IAC 1-2-1. Nonetheless, as the contract purchaser of the subject property, Mr. Kiger is the equitable owner of that property, and he could appear on his own behalf as one of the Petitioners.

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 Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reaches this decision for the following reasons:
 - a. Real property in Indiana is assessed based upon 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). A taxpayer may use generally accepted appraisal methods that are consistent with the 2002 Real Property Assessment Manual’s (Manual) definition of true tax value, including sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. MANUAL at 5.
 - b. 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. *See Long v. Wayne Township Assessor*, 821 N.E. 2d 466, 470 (Ind. Tax Ct.); MANUAL at 4, 8. Consequently, a party relying on a sale that occurred substantially before the relevant valuation date must explain how the sale price demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - c. Here, Mr. Kiger testified that the subject property was sold “through a bank on a repossession” for “around” \$25,000. The Petitioners, however, submitted a document entitled “Statement of Mortgage or Contract Indebtedness for Deduction from Assessed Valuation which reflects unpaid contract indebtedness of \$35,000 as of

March 1, 2001. *See Pet'rs Ex. 11.* Mr. Kiger also testified that the sale occurred approximately nine (9) years prior to the hearing. *Kiger testimony.* The Petitioners failed to submit any evidence to demonstrate how that sale price related to the subject property's market value-in-use as of January 1, 1999. Given the uncertainty of the Mr. Kiger's testimony concerning the sale and the lack of any evidence to relate the sale price to the relevant valuation date, the Board assigns no probative weight to Mr. Kiger's testimony concerning the sale price of the subject property.

- d. The Petitioners also contend that the subject land has little value because it is located in a flood plain and improvements cannot be constructed upon it. *Kiger testimony.* Even if the Board accepts the notion that the subject land's location in a flood plain detracts from the land's market value-in-use, the Petitioners did not submit any market-based evidence to quantify the effect.
- e. The Petitioners also point to tax bills for nine (9) vacant properties owned by Mr. Hein, which Mr. Kiger testified are located in a flood zone and are assessed for \$300. *Kiger testimony; Pet'rs Exs. 3-10.* The Petitioners, however, have done nothing to explain how those properties compare to the subject property other than Mr. Kiger's testimony that all of the properties are located in a flood zone. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471-72 (Ind. Tax Ct. 2005) (holding that the taxpayers failed to explain how the characteristics of the subject property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use). Moreover, the subject land differs from the other properties identified by the Petitioners in a significant respect: the subject land has been developed for improvements and actually has a house situated upon it, while the other parcels are vacant. *See Resp't Ex. 1; Pet'rs Exs. 3-10; Kiger testimony.* Mr. Kiger did not explain how this difference affects the relative market values of the properties
- f. Based on the foregoing, the Petitioners failed to establish a prima facie case of error in the subject property's assessment.

Conclusion

- 16. The Petitioners failed establish 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. 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>.