

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

**Petition #s:** 83-002-03-1-5-00004  
**Petitioner:** Robert L. Hein  
**Respondent:** Clinton Township Assessor (Vermillion County)  
**Parcel #s:** 002-002-0185-00  
**Assessment Year:** 2003

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 Vermillion County Property Tax Assessment Board of Appeals (the PTABOA) by written document.<sup>1</sup>
2. The PTABOA mailed notice of its determination on December 29, 2005.
3. The Petitioner timely initiated an appeal to the Board by filing a Form 131 petition with the Vermillion County Assessor on January 25, 2006. The Petitioner 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, Rick Barter (ALJ).
6. Persons present and sworn in at hearing:
  - a. For Petitioner: Kevin E. Kiger

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<sup>1</sup> 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 Petitioner's 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 subject property is a single-family residence located at 427 N. Ninth Street in Clinton, Clinton Township in Vermillion County.
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 \$6,900 for the land and \$49,000 for the improvements, for a total assessed value of \$55,900.
10. The Petitioner requested an assessment of \$6,000 for the land and \$20,000 for the improvements, for a total assessed value of \$26,000.

### **Record**

11. The official record for this matter is made up of the following:
- a. The Form 131 petition,
- b. The digital recording of the hearing,
- c. Exhibits:

Petitioner Exhibit 1 - Summary of contention,  
Petitioner Exhibit 2 - Copy of Notice of Hearing,  
Petitioner Exhibit 3 - Contract for Conditional Sale of Real Property dated  
January 3, 2005,  
Petitioner Exhibit 4 - Two copies of tax bill for subject property due November  
13, 2006,<sup>2</sup>

Respondent Exhibit 1 - None submitted,

Board Exhibit A - Form 131 petition,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Sign in sheet,

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<sup>2</sup> Given the Board's findings that the Petitioner did not appear in person or by authorized representative, Mr. Kiger's attempt to offer those exhibits into evidence was a nullity. *See infra*. To the extent the ALJ admitted those exhibits into evidence, the Board expressly overrules that decision. The Board includes a list of the Petitioner's exhibits solely for purposes of identification.

Board Exhibit D – Written authorization for Kevin Kiger to represent Robert L. Hein,

d. These Findings and Conclusions.

**Petitioner’s Failure to Appear at the Hearing**

12. The Petitioner did not appear at the administrative hearing in this matter. Kevin Kiger appeared on behalf of the Petitioner and submitted a document signed by the Petitioner purporting to authorize Mr. Kiger to represent him at the hearing. *See Board Ex. 2.*
13. The Board’s rules concerning small claims proceedings provide that a party may appear at a hearing before the Board on his own behalf, by an attorney who has filed a notice of appearance, or by a representative expressly authorized by the party, in writing, to appear on the party’s behalf. Ind. Admin. Code tit. 52, r. 3-1-4(a).
14. The above referenced rule, however, is subject to the Board’s rules concerning tax representatives. *See* 52 IAC 3-1-4(b) (“The rules concerning tax representatives under 52 IAC 1 apply to the small claims procedure”). With certain limited exceptions, the Board’s rules define an individual who appears before the Board on behalf of another person as a tax representative. *See* 52 IAC 1-1-6 (defining a tax representative as a person who represents another person at a proceeding before the Board, but excepting certain individuals, including attorneys and permanent full-time employees of the owner of the property under appeal). Mr. Kiger did not enter his appearance as an attorney for the Petitioner nor did he provide any other evidence showing that he falls within one of the categories of representatives excluded from the definition of a tax representative.
15. Consequently, Mr. Kiger was acting as a tax representative when he appeared before the Board. The Board’s procedural rules, however, prohibit tax representatives from practicing before the Board unless they are certified by the Department of Local Government Finance (DLGF). 52 IAC 1-2-1(a)(1). Mr. Kiger does not appear on the list of certified tax representatives published by the DLGF.
16. The Petitioner therefore failed to appear at the administrative hearing in person or through a properly authorized representative, and the Board cannot rely upon evidence or argument that Mr. Kiger offered on the Petitioner’s behalf. As set forth below, the Petitioner bore the burden of establishing a prima facie case that the assessment at issue is incorrect. Consequently, the Petitioner’s failure to present evidence or argument at the hearing mandates a finding in favor of the Respondent.
17. Even if the Board were to consider the evidence and argument presented by Mr. Kiger, however, it would conclude that the Petitioner failed to establish a prima facie case of error. The Board therefore presents an abbreviated analysis of the evidence and argument offered by Mr. Kiger as an alternative basis for its determination.

## Analysis

18. 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.
19. The Petitioner 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. The Petitioner contends the property is over-assessed when compared to the price for which the Petitioner bought the property in 2001, the asking price for which the Petitioner subsequently listed the property, and the price for which the Petitioner sold the property to his grandson on contract in 2005. *Kiger testimony, Pet'r Exs. 1, 3.*
  - b. Real property in Indiana 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 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 used by 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 in the mass appraisal context. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A. The value established by use of the 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.

- c. Regardless of the approach used to prove the market value-in-use of a property, Indiana's assessment regulations provide that for assessment years 2002-2005, a property's assessment must reflect its value as of January 1, 1999. *See* MANUAL at 2, 4; *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Consequently, a party relying on a sale to establish the market value-in-use of a property must provide some explanation as to how the sale price demonstrates or is relevant to the property's value as of January 1, 1999. *Id.*
- d. Mr. Kiger first testified that the Petitioner bought the subject property in 2001 for \$14,000 at a commissioners' sale. The Manual defines Market value 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.

MANUAL at 10.

- e. In a commissioners' sale, the seller is not typically motivated. Normally, a property owner seeks to sell his property for the highest amount the market will bring. A county's board of commissioners, however, has little motivation other than to secure a price sufficient to cover any unpaid taxes on the property. Moreover, properties sold at a commissioners' sale are unlikely to have been marketed in a commercially reasonable manner prior to the sale. Absent specific evidence to allay those concerns, the Board finds that Mr. Kiger's testimony regarding the amount for which the Petitioner bought the subject property is not probative of the property's market value-in-use.
- f. Mr. Kiger also testified that the Petitioner listed the subject property for sale with an asking price of \$35,000 for nearly a year, but that he received no offers. *Kiger testimony*. According to Mr. Kiger, when the Petitioner was unable to sell the property for its listed price, he decided to sell it on contract to his grandson for \$26,000. *Kiger testimony; Pet'r Ex. 3.*

- g. Under some circumstances, the inability to sell a property for its list price might provide evidence as to the upper limit of the property's market value. That is true, however, only where the owner has sufficiently exposed the property to the market. Here, Mr. Kiger did not provide any evidence regarding the efforts taken by the Petitioner to market the subject property other than to testify that the Petitioner had "listed" the property for sale for nearly a year. Mr. Kiger's limited testimony in that regard is insufficient to show that the list price represents the upper limit of the subject property's market value.
- h. Similarly, sales between related individuals normally do not constitute arm's length transactions. Mr. Kiger did not present any evidence to show that the Petitioner and his grandson were each acting exclusively in their own self-interest in order to overcome the presumption that their transaction did not occur at arm's length.
- i. Moreover, as explained above, the Petitioner was required to show how the listing and sale of the subject property, both of which occurred several years after the relevant valuation date of January 1, 1999, related to the subject property's market value-in-use as of as of January 1, 1999. *Long*, 821 N.E.2d at 471. Mr. Kiger did not present any evidence in that regard.
- j. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

### **Conclusion**

- 20. The Petitioner did not appear at the administrative hearing in person or by properly authorized representative. The Petitioner therefore failed to present any evidence or argument in support of his claims. Moreover, even if the Board were to consider the evidence submitted by Mr. Kiger purportedly on behalf of the Petitioner, it would find that the Petitioner failed to 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: **January 22, 2007**

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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>. ≡