

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

**Petition #s:** 83-002-03-1-5-00005  
**Petitioner:** Robert L. Hein  
**Respondent:** Clinton Township Assessor (Vermillion County)  
**Parcel #s:** 002-023-0081-00  
**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 decision 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 241 N. Sixth 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 \$7,100 for the land and \$38,000 for the improvements, for a total assessed value of \$45,100.
10. The Petitioner requested an assessment of \$300 for the land and \$28,000 for the improvements, for a total assessed value of \$28,300.

### **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 contentions,  
Petitioner Exhibit 2 - Settlement statement from sale of subject property,  
Petitioner Exhibit 3 - Copies of tax bills for nine vacant parcels,<sup>2</sup>
- Respondent Exhibit 1 - Copy of 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,
- d. These Findings and Conclusions.

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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.

### **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:

### *Sale Price of Subject Property*

- a. Mr. Kiger contends that the \$10,000 price that the Petitioner paid to purchase the subject property on September 26, 2002, provides a better indication of the property's market value than does its current assessment. In support of this contention, Mr. Kiger submitted as evidence a copy of the closing statement for the Petitioner's purchase of the subject property from Firststar Bank, NA. *Petitioner Exhibit 2*.
- b. 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 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 that explain the application of the cost approach in a 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. While the September 2002 purchase price may constitute evidence of the subject property's market value as of that date, Mr. Kiger did not present any evidence to show how that price relates to the property's value as of the relevant valuation date of January 1, 1999.

#### *Location in Flood Zone*

- e. Mr. Kiger also contends that the land portion of the subject property's assessment is excessive in light of the fact that the property is located in a flood zone. *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.
- f. Mr. Kiger submitted tax bills for nine vacant parcels that are assessed for \$300 each. *Id.* Mr. Kiger, however did not explain how those properties compare to the subject property other than to testify 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 parcels identified by Mr. Kiger 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'r Ex. 3; Kiger testimony*. Mr. Kiger did not explain how this difference affects the relative market values of the properties.
- g. Based on the foregoing, Mr. Kiger failed to establish a prima facie case of error in the subject property's 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 was 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>.