

**Indiana Board of Tax Review**  
100 North Senate Avenue, Room N-1058(A)  
Indianapolis, Indiana 46204  
(317)232-3786  
**Final Determination**

Petition Number:  
45-026-02-1-5-00183

**Mail To (Petitioner):**  
Kime Properties LLC  
3051 45th Avenue  
Highland IN, 46322

**Petitioner:**  
Kime Properties LLC  
3051 45th Avenue  
Highland IN, 46322

You are hereby notified that upon administrative review of this appeal the Indiana Board of Tax Review has determined the assessed value of the following described property:

Assessment as of March 1, 2002

**Description of Property:**

Lake County  
Residential Real Estate Appeal  
Parcel: 007263700870006

North Township

The details of the changes to the property listed on this petition can be found on the attached findings of fact and conclusions of law.

Within 15 days of the date of this notice, a party to the proceeding may request a rehearing before the Indiana Board. The Indiana Board MAY conduct a rehearing and affirm or modify the final determination. A petition for rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is granted (Ind. Code § 6-1.1-15-5).

An appeal from this determination may be taken by filing a complaint in the Indiana Tax Court and serving a copy of the complaint on the Indiana Board, Department of Local Government Finance, office of the Attorney General, and parties to the appeal before the Indiana Board all within 45 days of the date of the notice (Ind. Code § 6-1.1-15-5). The petitioner must request a certified record from the Indiana Board and otherwise comply with the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-5, Ind. Code § 33-3-5, and the rules of the Indiana Tax Court.

Dated: 04/10/2006

Indiana Board of Tax Review

*Betsy J. Brand*

Board Member

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition #:** 45-026-02-1-5-00183  
**Petitioner:** Kime Properties, LLC  
**Respondent:** The Department of Local Government Finance  
**Parcel #:** 007-26-37-0087-0006  
**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 Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$115,100 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on May 3, 2004.
3. The Board issued a notice of hearing to the parties dated September 8, 2005.
4. Special Master Kathy J. Clark held a hearing on October 12, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 220 Highland Street, Hammond, in North Township.
6. The subject property consists of a two-story, frame building with four living units.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined the assessed value of the subject property to be \$22,600 for the land and \$92,500 for the improvements, for a total assessed value of \$115,100.
9. On the Form 139L, the Petitioner requested an assessment of \$17,500 for the land and \$41,500 for the improvements, for a total assessed value of \$59,000.<sup>1</sup>

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<sup>1</sup> The Petitioner submitted an appraisal, Petitioner Exhibit 4, which determined the value to be \$30,000.

10. Shawn Lazarian, a partner in the Petitioner, Steven Kovachevich, appraiser for the Petitioner, and Sharon Elliott, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
- a) The Petitioner contends that the current assessed value exceeds its market value based on the condition of the building in 1999 and later years. *Lazarian testimony*. In support of this contention the Petitioner presented an appraisal valuing the property for \$30,000 as of January 1, 1999, a list of repairs and citations issued by the City of Hammond, and the testimony of a certified appraiser. *Kovachevich testimony; Petitioner Exhibit 4*.
  - b) According to the Petitioner, the City of Hammond issued various citations and listed repairs needed in 1999 and later years. These include a list of repairs needed for other buildings owned by the Petitioner along with those needed for the subject. The first list was done by the City July 27, 1999. *Petitioner Exhibit 4, pg 17*. The second citation and list was issued November 6, 2000. *Petitioner Exhibit 4, pgs 18 and 19*. Another violation notice was given on April 19, 2001. *Petitioner Exhibit 4, pgs 20 and 21; Kovachevich testimony*.
  - c) The Petitioner's appraiser testified that he appraised the property using the cost, income, and market approaches to value. *Petitioner Exhibit 4; Kovachevich testimony*. Further, according to the appraiser, it became evident that the property suffers from negative aspects affecting all three. *Kovachevich testimony*. Even though enough repairs have been made recently to prevent further citations from the City of Hammond the building is still today in less than desirable condition and more serious repairs are still needed. *Id*. In addition, the appraiser argued, the layout of the rental units attributes to functional obsolescence which was also considered in the January 1, 1999, appraisal. *Id*. Also contributing to the low value is the economic problem that any investor would take into consideration, the area is not a "high rent" area. *Id*. This prohibits an investor from seeing any return on his investment because the dollars spent to fix up the building cannot be earned back by charging higher rent. *Id*. This factor contributes to the on-going high vacancy problem suffered by the subject. In 1999, only one of the four units was even habitable, that represents a 75% vacancy problem that still causes problems today. *Petitioner Exhibit 4; Kovachevich testimony*.
12. Summary of Respondent's contentions:
- a) The Respondent contends that the assessment is correct based on a sales comparisons. According to the Respondent, a report of comparable sales found within the subject's

neighborhood support the current assessment value. *Respondent Exhibits 3 and 4; Elliott testimony.*

- b) However, the Respondent admitted that an error was made on the neighborhood code that the subject property is assigned. According to the Respondent, the correct neighborhood code is #02648 not the #02630 currently assigned. *Respondent Exhibit 1; Elliott testimony.*

### **Record**

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

- a) The Petition,
- b) The tape recording of the hearing labeled Lake County 1885,
- c) Exhibits:

Petitioner Exhibit 1 – Form 139L Petition,  
Petitioner Exhibit 2 – Notice of Final Assessment,  
Petitioner Exhibit 3 – Summary of Petitioner’s argument,  
Petitioner Exhibit 4 – Kovachevich & Co. appraisal for January 1, 1999,

Respondent Exhibit 1 – Subject property record card,  
Respondent Exhibit 2 – Subject photograph,  
Respondent Exhibit 3 – Top 20 comparable sales sheet,  
Respondent Exhibit 4 – Comparable property record card and photograph,

Board Exhibit A - Form 139L,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C – Hearing Sign in Sheet,

- d) These Findings and Conclusions.

### **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 Petitioner provided sufficient evidence to establish a prima facie case. The Respondent failed to rebut the Petitioner’s evidence. This conclusion was arrived at because:

- a) The Petitioner contends the value of the subject property is over-stated because the subject improvements suffer from many serious condition problems that are not given full consideration in the current assessment. The Petitioner submitted an appraisal for the subject property prepared by a licensed, certified appraiser for January 1, 1999; the appraiser estimated the value to be \$30,000. The long list of repairs that is a part of the appraisal represents both structural and health and safety issues. *Petitioner Exhibit 4*.
- b) Real property in Indiana is assessed on the basis of its “true tax value”. See I.C. 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 2.3-1-1) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). All three of these approaches, when properly processed, should produce approximately the same estimate of value. *Id.*
- c) 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. *Long*, at 471; MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- d) Where a petitioner establishes a prima facie case for a change in the assessment, the burden shifts to the Respondent to impeach or rebut the sales price. See *American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent submitted a property record card for one property that sold in the Petitioner’s neighborhood in support of the assessment. *Respondent Exhibits 3-4*. To rebut or impeach Petitioner’s case, a Respondent has the same burden to present probative evidence that the Petitioner faces to raise its prima facie case. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County*

*Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), “the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions, and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that comparable property has been treated differently, the taxpayer must provide specific reasons as to why it believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.” 836 N.E.2d at 1082 (citations omitted). The Respondent failed to show the “comparable” properties are, in fact, comparable to the subject property.<sup>2</sup> Thus, the Board finds that the Respondent failed to impeach or rebut the Petitioner’s evidence.

### Conclusion

16. The Petitioner established a prima facie case. The Respondent failed to rebut the Petitioner’s evidence. The Board finds for the Petitioner.

### Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed from \$115,100 to \$30,000.

ISSUED: 4-10-06

*Betsy J. Beard*

Commissioner,  
Indiana Board of Tax Review

<sup>2</sup> The Board also notes that the property put forth by the Respondent as comparable is a three family structure while the subject property is a four family rental property. Further, the Respondent acknowledged that the correct neighborhood number for the subject property is #02648, not #02630. Thus, the sales report and property record card used to support the current assessed value are not probative since they are specific to neighborhood #02630. *Respondent Exhibits 3 and 4; Elliott testimony.*

## 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>. 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 days of the date of this notice.