

REPRESENTATIVE FOR PETITIONER:
Joseph A. Bachman, Pro Se

REPRESENTATIVE FOR RESPONDENT:
Cathy Searcy, Elkhart County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Joseph A. Bachman,	)	Petition No.:	20-012-07-1-5-00007
)		
Petitioner,	)	Parcel No.:	20-06-05-326-024.000-012
)		
v.	)	County:	Elkhart
)		
Elkhart County Assessor,	)	Township:	Concord
)		
Respondent.	)	Assessment Year:	2007

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

October 23, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. In this assessment appeal, Joseph Bachman offered evidence that the subject property was listed for sale at \$14,500 in 2005 and 2006 before he eventually bought it for \$9,524 in April 2007. Based on that evidence, Mr. Bachman showed that the property was worth no more than \$14,500 as of the January 1, 2006—the relevant valuation date for the March 1, 2007, assessment under appeal. The Board therefore finds for Mr. Bachman.

Procedural History

2. Mr. Bachman requested a hearing with the Concord Township Assessor to contest his property's 2007 assessment.¹ On November 13, 2008, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering that assessment, but not to the level that Mr. Bachman had requested. As a result, on November 20, 2008, Mr. Bachman filed a Form 131 petition with the Board. The Board has jurisdiction over Mr. Bachman's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On June 17, 2009, the Board's Administrative Law Judges, David Pardo and Patti Kindler (“ALJs”), held a hearing on Mr. Bachman's appeal. Neither the Board nor the ALJs inspected the subject property.
4. The following people were sworn in as witnesses:

For Mr. Bachman:

Joseph A. Bachman
Kathryn D. Brown

¹ Mr. Bachman's Form 131 petition does not include a copy of that written request.

For the Assessor:

Cathy Searcy, Elkhart County Assessor
Ronette DeFreese, Concord Twp. Assessor
Marlene Tudor, Concord Twp. Deputy Assessor

5. Mr. Bachman submitted the following exhibits:

Petitioner Exhibit A: April 20, 2007, settlement statement,
Petitioner Exhibit A-O: 2006 property record card (“PRC”) for the subject property,
Petitioner Exhibit A-1: First American Title Insurance Company data Schedule B,
Petitioner Exhibit B: First American Title Insurance Company data, Schedule A with legal description,
Petitioner Exhibit C: April 20, 2007, handwritten land contract between Mr. Bachman and Kathryn Brown, with legal description, transfer record, limited warranty deed, and sales disclosure,
Petitioner Exhibit D: Multiple Listing Service (“MLS”) sheet showing subject property’s sale on April 24, 2007,
Petitioner Exhibit E: Property tax calculation for 2007-pay-2008,
Petitioner Exhibit F: MLS sheet for the subject property, showing a December 27, 2006, listing date, and an expiration date of March 31, 2007,
Petitioner Exhibit H: Subject PRC dated 2/8/08,
Petitioner Exhibit J: Notice of Assessment, Form 11, for the 2007 assessment year,
Petitioner Exhibit K: November 13, 2008, Notice of Final Assessment Determination,
Petitioner Exhibit L: PRCs for the subject property dated 1/25/08 and 8/17/08,
Petitioner Exhibit M: November 26, 2006, letter from S.E. Draves to Kathryn Brown.²

6. The Assessor submitted the following exhibits:

Respondent Exhibit 2: PRC for the subject property dated 2/8/08,³
Respondent Exhibit 3: July 6, 2007, transfer data for the subject property,
Respondent Exhibit 4: PRC for the subject property dated 9/13/08,
Respondent Exhibit 5: September 20, 2004, transfer data,
Respondent Exhibit 6: Sales disclosure data for the subject property’s

² Mr. Bachman did not offer an Exhibit G or an Exhibit I.

³ The Assessor did not offer an Exhibit 1.

- Respondent Exhibit 7: September 20, 2004, sale, Sales disclosure data for the subject property's September 20, 2004, sale,
- Respondent Exhibit 8: Sales Ratio Study, page 6,
- Respondent Exhibit 9: Sales Ratio Study, page 7,
- Respondent Exhibit 10: Neighborhood Factor Calculation, page 6,
- Respondent Exhibit 11: Neighborhood Factor Calculation, page 7,
- Respondent Exhibit 12: May 30, 2008, photograph of the subject home's rear,
- Respondent Exhibit 13: July 25, 2008, photograph of the subject home's front,
- Respondent Exhibit 14: Undated photograph of the subject home's front,
- Respondent Exhibit 15: July 25, 2008, photograph of the subject home's side,
- Respondent Exhibit 16: PRC for the subject property dated 8/08/08,
- Respondent Exhibit 16A: Page 4 from the Form 130 petition,
- Respondent Exhibit 17: July 29, 2008, photograph from interior inspection of the subject property,
- Respondent Exhibit 18: July 29, 2008, photograph from interior inspection of the subject property,
- Respondent Exhibit 19: July 29, 2008, photograph from interior inspection of the subject property,
- Respondent Exhibit 20: July 29, 2008, photograph from interior inspection of the subject property,
- Respondent Exhibit 21: Page 4 from the Form 130 petition.

7. The Board recognized the following additional items as part of the record of proceedings:
 - Board Exhibit A: The Form 131 petition with attachments,
 - Board Exhibit B: Notice of hearing,
 - Board Exhibit C: Request for continuance,
 - Board Exhibit D: Board's letter granting continuance,
 - Board Exhibit E: Notice of hearing, rescheduled,
 - Board Exhibit F: Hearing sign-in sheet
8. The subject property includes a one-story 1,218-square-foot home on a 45' by 70' lot. It is located at 314 Sherman Street in Elkhart.
9. The PTABOA determined the property's assessment at \$7,100 for the land, and \$17,900 for the improvements, for a total assessment of \$25,000.
10. Mr. Bachman requested a total assessment of \$10,000.

Administrative Review and the Parties' Burdens

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
13. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

Parties' Contentions

A. Mr. Bachman's contentions

14. Mr. Bachman argues that the subject property's \$25,000 assessment is excessive because he bought the property on April 20, 2007, for only \$9,524. *Bachman testimony; Pet'r Exs. A, D.* That same day, Mr. Bachman re-sold the property on land contract to Ms. Brown for \$10,428. *Bachman testimony; Pet'r Ex. C.* At the same time, Mr. Bachman loaned Ms. Brown \$7,000 for personal items, including appliances, repairs and “whatever.” *Pet'r Ex. C.*
15. Prudential One Realty listed the subject property for \$14,000 on December 27, 2006, but the listing expired in March of 2007, and the property did not sell. *Bachman testimony;*

Pet'r Ex. F. The property had been on the market for \$14,500 for two years before that. *Bachman testimony.*

16. Although the subject property sold for \$66,000 on June 24, 2004, that sale had to be a “scam” to get money out of Wachovia Bank, because the property had sold just three months earlier for \$14,500. *Bachman testimony; Pet'r Ex. A-01.* Nobody ever lived in the property; it was vacant until Mr. Bachman bought it in 2007. *Id.* The home had no working furnace or gas-line hook-ups, and its electrical wiring dated to 1900. In fact, the home was unlivable at that time, and it is still in poor condition. The Assessor’s pictures are misleading—they make the home appear as if it is in better condition that it actually is. *Bachman testimony.*
17. Similarly, the subject land is not worth \$7,100 because it is only a 40-foot wide.⁴ *Bachman testimony; Petitioner Ex. A-01.* The neighbor’s property line is only two inches from the subject house and the neighbor’s fence prevents Ms. Brown from repairing the concrete foundation on that side of the home. *Id.* Elkhart County’s zoning ordinances classify the lot as unbuildable; if the house burned down, the lot would be worthless. *Bachman testimony.*
18. The Assessor calculated taxes by throwing all sales, including the subject property’s sale, into a pile and averaging them. The other houses in the sales-ratio studies, however, had furnaces, updated electricity, and gas hook-ups, while the subject house is a piece of junk. *Bachman testimony.*

B. The Assessor’s contentions

19. The subject property’s assessment is correct. After inspecting the property, the Concord Township Assessor lowered the home’s grade and condition rating. That reduced the property’s assessment from \$49,000 to \$25,000. *DeFreese testimony; Resp't Exs. 16-21.*

⁴ According to the property record card and MLS data submitted by Mr. Bachman, the subject lot is 45' by 70'. *See Petitioner Exs. A-01, D, H.*

20. The subject property's earlier \$66,000 sale was not included in the neighborhood's sales-ratio study because it was viewed as invalid. That sale therefore did not affect the neighborhood's assessments. *DeFreese testimony; Resp't Exs. 6 & 7.* The ratio study includes all valid sales from the neighborhood. *DeFreese testimony; Resp't Exs. 8 - 11.* Based on its ratio study, the Assessor developed the 1.08 neighborhood market factor that was used to assess neighborhood properties. *Id.* Sales of comparable properties support applying the 1.08 multiplier to the subject property and to other properties throughout the neighborhood. *Searcy testimony; Resp't Exs. 8-11.*
21. Mr. Bachman bought the subject property through a foreclosure, which is not an arm's length transaction. *Searcy testimony.*

Discussion

A. The year under appeal

22. On his Form 131 petition, Mr. Bachman listed the assessment years under appeal as 2006, 2007, and 2008. But he only provided a final determination from the PTABOA for the 2007 assessment year. And Ms. Searcy testified that, while Mr. Bachman's Form 130 petition originally listed the year of appeal as 2006, but that year was crossed out and made into 2007. The PTABOA therefore considered only 2007. *Searcy testimony.* Ms. Searcy also testified that Mr. Bachman filed his Form 130 petition on August 17, 2007, which would not have been timely to appeal the subject property's 2006 assessment. On those facts, the Board will only consider the subject property's 2007 assessment.

B. Mr. Bachman made a prima facie case of error.

23. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "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."

2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

24. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
25. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. For March 1, 2007, assessments, the relevant valuation date was January 1, 2006. Ind. Code § 6-1.1-31-6 (c); 50 IAC 21-3-3.
26. Mr. Bachman contends that the subject property should be assessed for \$10,000—the approximate amount for which he bought and resold the property on April 24, 2007. *Bachman testimony; Petitioner Exs. A, C*. But those sales occurred more than 14 months after the relevant January 1, 2006, valuation date. Thus, by themselves, the sale prices from those transactions are not probative of the property's true tax value. Mr. Bachman

needed to offer evidence to show the subject property's market value-in-use as of January 1, 2006.

27. The Board therefore turns to Mr. Bachman's evidence about the subject property's listing history. Mr. Bachman offered a MLS sheet showing that Prudential One Realty listed the subject property on the open market between December 27, 2006 and March 31, 2007, with an asking price of \$14,000. *Pet'r Ex. F.* Mr. Bachman also testified that, before the Prudential One listing, the property had been listed for two years with an asking price of \$14,500. Although Mr. Bachman did not testify to the precise dates of the earlier listing, the Board infers from his testimony that it covered the two years preceding the Prudential One Realty listing, or roughly 2005 and 2006. Granted, by themselves, list prices do little to show a property's market value-in-use. But where a property is actively listed for a commercially reasonable period without selling, one may infer that it is worth no more than its list price. Thus, based on the property's listing history that spanned the relevant valuation date and its ultimate sale to Mr. Bachman below that list price, Mr. Bachman made a prima facie case that the property's true tax value was no more than \$14,500.

C. The Assessor did not successfully impeach or rebut Mr. Bachman's evidence.

28. The burden therefore shifted to the Assessor to impeach or rebut Mr. Bachman's evidence. *Meridian Towers*, 805 N.E.2d at 479. The Assessor tried to do both but ultimately succeeded in doing neither.
29. The Assessor claimed that Mr. Bachman did not buy the subject property in an arm's-length transaction because the sale stemmed from a foreclosure by Wachovia Bank. *Searcy testimony*. The Assessor, however, did not allege that Mr. Bachman bought the property at a forced sale. Although Wachovia Bank may have acquired the property after initiating foreclosure proceedings, it retained a real estate agent to list the property for sale.

30. In essence, the Assessor asks the Board to find that banks necessarily list or sell properties for less than typically motivated sellers do. The Assessor, however, offered no evidence to support that proposition. The Board therefore will not automatically assume that the subject property sold for less than its market value. Even if Wachovia was not typically motivated and therefore was willing to sell the property for less than its market value, neither Wachovia nor the prior owner was able to sell it for \$14,500. And the Board ultimately bases its determination on that \$14,500 list price.
31. The Assessor also attempted to rebut Mr. Bachman's evidence by arguing that the subject property was assessed using the same 1.08 multiplier used to assess other properties in the same neighborhood, and that the multiplier was based on a sales-ratio study that included sales of properties that were comparable to the subject property.
32. In a broad sense, the Assessor correctly recognized that one can estimate a property's market value-in-use by comparing it to similar properties that have sold in the marketplace. *See* MANUAL at 13. Indeed, that is precisely the theory behind the sales-comparison approach. *Id.* But to apply that approach, a party must show that the purportedly comparable properties sufficiently resemble the appealed property. *See Long*, 821 N.E.2d 470. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See id.* at 470-71. Equally important, a party applying the sales-comparison approach must explain how any relevant differences between the properties affect their relative market values-in-use. *See Id.*
33. The Assessor did not offer that type of analysis. While the sales that the Assessor relied on may have been from the subject property's neighborhood, she failed to explore other ways in which the sold properties compared to the subject property. She likewise failed to adjust the purportedly comparable properties' sales prices to reflect relevant ways in which they differed from the subject property. The Assessor's sales evidence therefore lacks probative value. In any event, it does not outweigh Mr. Bachman's evidence about the subject property's actual sale and listing prices.

Summary of Final Determination

34. Mr. Bachman made a prima facie case that the subject property's assessment should be no more than its listing price of \$14,500, and the Assessor failed to adequately impeach or rebut the Bachman's evidence. The Board therefore finds for Mr. Bachman and orders that the subject property's assessment be reduced to \$14,500.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>