

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

Petition: 20-030-06-1-5-00136
Petitioner: Joseph A. Bachman
Respondent: Elkhart County Assessor
Parcel: 20-03-28-302-019.000-030
Assessment Year: 2006

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

Procedural History

1. On January 6, 2007, Joseph A. Bachman sent a letter to the “Assessor’s office” asking for his property’s assessment to be lowered.¹ *Pet’r Ex. 01*. On April 17, 2007, the Elkhart County Assessor issued a Form 115 Notice of Final Assessment Determination in which she lowered the quality grade applied to Mr. Bachman’s house. *Searcy testimony; Resp’t Ex. 1*. The Form 115 notified Mr. Bachman that the assessment determination resulted from a “Township/Petitioner Conference,” and it was signed by Cathy Searcy, the Elkhart County Assessor. Ms. Searcy signed in the space provided for the township assessor because her office assessed all real estate in Elkhart County. *Searcy testimony*.
2. Mr. Bachman did not agree with the assessment reflected on the Form 115, and he wanted a hearing. *Searcy testimony*. Consequently, on July 9, 2007, the PTABOA issued a notice informing Mr. Bachman that it had scheduled a hearing on his appeal for July 24, 2007. *Id.; see also, Board Ex. A*. When Mr. Bachman appeared for that hearing, the PTABOA said that it lacked jurisdiction to hear his appeal because a Form 115 had already been issued. *Searcy testimony*. The County Assessor told Mr. Bachman that he could appeal to the Board if he thought that he had been treated unfairly. *Id.*

¹ Both Mr. Bachman’s letter and his Form 131 petition refer to two parcels: parcel 20-03-28-302.019-030 (“parcel 19”), the parcel on which his home sits and which is referenced in the caption to this determination, and parcel 20-03-28-302.018-030 (“parcel 18”), which Mr. Bachman testified is a contiguous vacant lot that contains a septic system. *Pet’r Ex. 01; Bachman testimony*. But other than tax statements, Mr. Bachman did not attach any information about parcel 18 to his Form 131 petition, and the Board’s hearing notice referenced only parcel 19. *See Board Ex. A*. When the ALJ attempted to clear up the confusion about which parcels were being appealed, Mr. Bachman agreed that he had only appealed parcel 19. *Bachman testimony*. In any event, neither the PTABOA nor any other local official took action on parcel 18. *Searcy testimony*. Thus, an appeal of parcel 18 would have the same jurisdictional defects identified in the Board’s discussion regarding Mr. Bachman’s appeal of parcel 19.

3. Shortly thereafter, on August 1, 2007, Mr. Bachman filed a Form 131 petition with the Board.
4. On June 17, 2009, the Board held a hearing through its Administrative Law Judges David Pardo and Patti Kindler (“ALJ”).
5. People present and sworn in at hearing:
 - Joseph A. Bachman
 - Cathy Searcy, Elkhart County Assessor
6. Neither the Board nor the ALJs inspected the property.
7. The Form 115 reflects the following assessment:

Land: \$19,300	Improvements: \$176,600	Total: \$195,900.
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8. Mr. Bachman did not request a specific assessment for his property.

Parties’ Contentions

9. Mr. Bachman offered the following evidence and argument:
 - a) Mr. Bachman contends that his property is assessed for more than it is worth. *Bachman testimony*. A fair assessment would be between \$100,000 and \$165,000. *Bachman testimony; Board Ex. A*.
 - b) Mr. Bachman’s neighborhood is dangerous, has a lot of traffic and is near the river. *Bachman testimony*. The neighborhood contains small homes, some of which have been foreclosed upon and are vacant. *Bachman testimony; Pet’r Exs. 13–25*. Also, there is a house for mentally disabled people across the street from Mr. Bachman’s property, which has made it difficult for him to sell the property. *Bachman testimony; Pet’r Exs. 15-17*.
 - c) Mr. Bachman’s home was damaged by a fire and has not been completely repaired. *Bachman testimony; Pet’r Exs. 1, 7–12*. And Mr. Bachman’s property is located on the St. Joseph River, which floods every year. *Bachman testimony; Pet’r Exs. 2–3*.
 - d) Mr. Bachman offered Multiple Listing Service sheets for four properties in Washington Township and one in Concord Township, all of which sold between April 10, 2006, and January 19, 2007. *Pet’r Exs 27–31*. Most of those properties were in better, more private locations than Mr. Bachman’s property and had bigger lots. *Id*. The five properties sold for prices ranging from \$135,000 to \$245,000. *Bachman testimony; Pet’r Exs. 27-31*. Similarly, the highest 2006-

pay-2007 taxes for any of those properties was \$1,809, while Mr. Bachman's taxes were more than \$3,000. *Id.*; *Bachman testimony*.

- e) Finally, Mr. Bachman has put his property on the market six times. The first time was in 1995 when a realtor told him that he could get about \$140,000 for it. *Bachman testimony*. The property was also listed for \$194,500 in October 1997 and for \$249,900 in May 2007. *Pet'r Exs. 2-3*. Despite those listings, Mr. Bachman has received no offers and has had only a few showings. *Bachman testimony*. People know that the home has fire damage and that the river floods. Also, potential buyers prefer more secluded locations off the highway that are in better neighborhoods with better schools. *Bachman testimony*.
10. The Assessor offered the following evidence and arguments:
- a) The Assessor objected to all of Mr. Bachman's evidence. According to the Assessor, the Board lacks jurisdiction over Mr. Bachman's appeal because the PTABOA did not hear it. *Searcy objection*.
- b) In any event, the Assessor contends that Mr. Bachman's evidence is irrelevant to the value of Mr. Bachman's property's as of January 1, 2005—the valuation date for March 1, 2006, assessments. The Assessor considered sales data from 2004 and 2005. By contrast, Mr. Bachman's sales data and photographs were from 2006 and 2007. Mr. Bachman similarly failed to explain how the size and grade of the other homes that he identified compared to the size and grade of his home. *Searcy argument*.

Record

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

- a) The Form 131 petition.
- b) A digital recording of the hearing.
- c) Exhibits:

Petitioner's Exhibit 01 – December 29, 2006, Notices of Assessment of Land & Structures, ("Form 11") for parcels 20-03-28-302-019.000-030 and 20-03-28-302-018.000-030, with January 1, 2007, letter from Joseph Bachman to "Assessor's office,"

Petitioner's Exhibit 1 – November 5, 1996, letter from Associated Adjusters to Joseph Bachman,

Petitioner's Exhibit 2 – May 8, 2007, MLS listing sheet for Mr. Bachman's property,

- Petitioner's Exhibit 3 – A page from Coldwell Banker publication dated October 31, 1997, with a listing for Mr. Bachman's property,
- Petitioner's Exhibit 4 – 2006 tax statements for Mr. Bachman's property,
- Petitioner's Exhibit 5 – Form 11 for parcel 20-03-28-302-018.000-030,
- Petitioner's Exhibit 6 – Form 11 for parcel 20-03-28-302-019.000-030,
- Petitioner's Exhibit 7 – Photograph of fire damage to the pull-down stairs,
- Petitioner's Exhibit 8 – Photograph of fire damage to fireplace,
- Petitioner's Exhibit 9 – Photograph of fire damage to attic rafters,
- Petitioner's Exhibit 10 – Photograph of fire damage to attic rafters,
- Petitioner's Exhibit 11 – Photograph of holes in the carpet from fire,
- Petitioner's Exhibit 12 – Photograph of fire damage to attic,
- Petitioner's Exhibit 13 – Photograph of the neighbor's property to the east,
- Petitioner's Exhibit 14 – Photograph of the neighbor's property to the east,
- Petitioner's Exhibit 15 – Photograph of the home across the street before its demolition,
- Petitioner's Exhibit 16 – Photograph of the rear of the home across the street during demolition,
- Petitioner's Exhibit 17 – Photograph of the sign for the ADEC facility located across the street,
- Petitioner's Exhibit 18 – Photograph of the new ADEC housing located across the street,
- Petitioner's Exhibit 19 – Photograph of the third home to the west,
- Petitioner's Exhibit 20 – Photograph of the first home to the west of Mr. Bachman's property,
- Petitioner's Exhibit 21 – Photograph of the lot between Mr. Bachman's property and the neighbor to the west,
- Petitioner's Exhibit 22 – Photograph of a vacant home located east of Mr. Bachman's property,
- Petitioner's Exhibit 23 – Photograph of the first home west of the ADEC facility,
- Petitioner's Exhibit 24 – Photograph of the second home west of the ADEC facility,
- Petitioner's Exhibit 25 – Photograph of the second home west of Mr. Bachman's home,²
- Petitioner's Exhibit 27 – MLS sheet for 17490 Kirkland,
- Petitioner's Exhibit 28 – MLS sheet for 52381 CR 25,
- Petitioner's Exhibit 29 – MLS sheet for 607 N River Road,
- Petitioner's Exhibit 30 – MLS sheet for 902 Trout Creek Road,
- Petitioner's Exhibit 31 – MLS sheet for 3920 E Jackson Blvd,

² Mr. Bachman did not offer an exhibit 26.

Petitioner's Exhibit 32 – July 25, 2007, receipt of filing homestead for Mr. Bachman's property,
Petitioner's Exhibit 33 – July 25, 2007, receipt of filing for homestead credit,
Petitioner's Exhibit 34 – January 7, 2004, receipt of filing for homestead credit,

Respondent's Exhibit 1 – April 17, 2007, Form 115 Notice of Final Assessment Determination for the Mr. Bachman's property,

Board Exhibit A – Form 131 petition,
Board Exhibit B – A November 26, 2007, letter from Mr. Bachman to the Board's secretary with attached Form 114 notice,
Board Exhibit C – Notice of hearing,
Board Exhibit D – Mr. Bachman's request to continue the hearing with attachments (6 pages),
Board Exhibit E – February 5, 2009, letter granting continuance,
Board Exhibit F – Notice of re-scheduled hearing,
Board Exhibit G – Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

A. The Board lacks jurisdiction over Mr. Bachman's appeal

12. The Board is a creature of the legislature and therefore has only those powers conferred by statute. *See Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999) (addressing the authority of the now abolished State Board of Tax Commissioners). And "[a]ll doubts regarding a claim to power of a governmental agency are resolved against the agency." *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996). Thus, where the General Assembly has laid out statutory procedures for appealing to the Board, those procedures must be substantially followed before the Board can hear an appeal.
13. Unfortunately, the applicable statutory procedures were not substantially followed in this case. Indiana Code § 6-1.1-15 sets forth the usual procedures for a taxpayer to appeal from an assessment. At the times relevant to Mr. Bachman's appeal, that statute required a taxpayer to begin the process by timely filing a written notice asking for a preliminary conference with the local official that made the contested assessment. Ind. Code § 6-1.1-15-1(b) (2006 replacement vol.). The official and taxpayer were required to complete and sign a prescribed form specifying the results of the conference, including the items of agreement and disagreement. I.C. § 6-1.1-15-1(f)-(g) (2006 replacement vol.).

14. If there were no items of disagreement, the official was required to give notice of the agreed amount to the taxpayer, the county assessor, and the PTABOA. I.C. § 6-1.1-15-1(h) (2006 replacement vol.).³ If, on the other hand, there was any disagreement, the PTABOA was required to hold a hearing and prepare a written statement of its findings and decision. I.C. § 6-1.1-15-1(i) –(k)-(l) (2006 replacement vol.). Although the PTABOA was required to hold that hearing and issue its decision within specified timeframes, the statute did not provide for the taxpayer to appeal to the Board if the PTABOA failed to act within those timeframes. *See* .C. § 6-1.1-15-1(k)-(l) (2006 replacement vol.). That changed in 2007 when the General Assembly amended the statute to give taxpayers that option. *See* P.L. 219-2007 § 38 (adding what is now subsection (o) to I.C. § 6-1.1-15-1). But that amendment applied only to appeals in which taxpayers began the appeal process at the local level after June 30, 2007. P.L. 219-2007 § 156(a)(1). Because Mr. Bachman began the process on January 6, 2007, the amendment does not apply to his appeal.
15. Because the PTABOA never made a determination, this case skipped the last step under Ind. Code § 6-1.1-15-1. Granted, the Assessor issued a Form 115, apparently as the result of an informal conference with Mr. Bachman. But that Form 115 does not purport to be a determination by the PTABOA. And there is little evidence that Mr. Bachman agreed to the assessment set forth in the Form 115—he did not sign the form and the parties offered nothing else to show his agreement. In any event, had Mr. Bachman agreed to the assessment, he would have waived his right to appeal to the Board. Instead, it appears that Mr. Bachman disagreed with the assessment and asked for a hearing before the PTABOA, thereby triggering the PTABOA’s duty to hold a hearing and issue a written decision. Unfortunately, the PTABOA did not do that. And the statute did not offer Mr. Bachman the option of bypassing the PTABOA and appealing to the Board. The Board therefore lacks jurisdiction over Mr. Bachman’s appeal.
16. Although this result may seem harsh, the statutes as they existed at the times relevant to Mr. Bachman’s appeal compel it. And that harshness is mitigated by the fact that the Board would have declined to give Mr. Bachman any relief even if it were to address his appeal on its merits. To explain why, the Board turns to those merits.

B. Mr. Bachman’s appeal would fail on its merits

17. A taxpayer seeking review of an assessing official’s determination must make a prima facie case proving both that his property’s assessment is incorrect and specifically 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). Of course, that begs the question of how a taxpayer can meet that burden. To answer that question, one must turn to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana’s assessment system.

³ The statute, however, preserved the right of the PTABOA to change that agreed assessment under Ind. Code § 6-1.1-13. *Id.*

18. 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.” REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has 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, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
19. A property’s assessment, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax 2005) *reh’g den. sub nom. PA 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 (“USPAP”) 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.
20. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the appealed 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. *Id.* For March 1, 2006, assessments, the relevant valuation date was January 1, 2005. 50 IAC 21-3-3.
21. Because Mr. Bachman failed to offer probative evidence of the types described by the Tax Court and Manual, he did not make a prima facie case.
22. First, Mr. Bachman identified various factors that he believed lowered his property’s value. Many of them related to the property’s neighborhood, although some, such as his house’s fire damage, related to the property itself. Even if those factors affected his property’s value, Mr. Bachman offered no evidence to quantify that effect.
23. Second, Mr. Bachman pointed to the sale prices for five Elkhart County properties, four of which sold for less than his property’s assessment. *Pet’r Exs. 27-31*. But those properties all sold between April 10, 2006, and January 19, 2007, and Mr. Bachman, did not offer any probative evidence to explain how those sale prices related to his property’s value as of the relevant January 1, 2006, valuation date. At most, he conclusorily asserted that property values in Indiana increase by no more than 1% per year and that his property’s value had not increased since 1992. *Bachman testimony*.
24. Mr. Bachman’s comparative sales data lacked probative value for other reasons as well. In order to use the sales-comparison approach as evidence in a property assessment

appeal, the party relying on that approach must show that the properties being examined are comparable to each other. Conclusory statements that two properties are “similar” or “comparable” to each other are not probative. *Long*, 821 N.E.2d at 470. Instead, the party must identify the relevant characteristics of the property under appeal and explain how those characteristics compare to each purportedly comparable property’s characteristics. *Id.* at 471. Similarly, he must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-471.

25. Beyond describing each purportedly comparable property’s location, tax liability, and a few other details, Mr. Bachman did little to compare any of those properties to his property. Mr. Bachman did submit MLS sales data from which a more-detailed comparison arguably could be made. But it was Mr. Bachman’s duty to walk the Board through his sales-comparison analysis. *See Long*, 821 N.E.2d 471 (finding that the Board was not required to review the taxpayer’s documents to determine if properties were comparable). More importantly, Mr. Bachman did not even attempt to adjust the purportedly comparable properties’ sale prices to reflect any relevant ways in which they differed from his property or to otherwise explain how any differences affected the properties’ relative values.
26. Finally, Mr. Bachman testified that he repeatedly tried to sell his property, and he offered specific information about two separate listings—one in May 2007, and the other in October 1997. *Bachman testimony; Pet’r Exs. 2-3*. Once again, however, Mr. Bachman failed to offer any probative evidence to explain how either listing related to his property’s value as of the relevant January 1, 2005, valuation date. Also, while an unsuccessful listing price may sometimes show the upper limit of a property’s market value, that would not help Mr. Bachman because the more recent of the two listing prices that he identified was for an amount well above his property’s assessment.
27. Thus, because Mr. Bachman did not offer probative evidence to rebut the presumption that his property was correctly assessed, he failed to make a prima facie case.

Conclusion

28. The Board lacks jurisdiction to hear Mr. Bachman’s appeal. It therefore dismisses his appeal.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now dismisses Mr. Bachman’s appeal.

ISSUED: _____

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>>