

REPRESENTATIVE FOR PETITIONER:  
Michael S. Fahlbeck, *pro se*

REPRESENTATIVE FOR RESPONDENT:  
Cathy Searcy, Elkhart County Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Michael S. Fahlbeck,	)	Petition No.:	20-026-07-1-5-00046
	)		
Petitioner,	)	Parcel No.:	20-02-26-302-008.000-026
	)		
v.	)	County:	Elkhart
	)		
Elkhart County Assessor,	)	Township:	Osolo
	)		
Respondent.	)	Assessment Year:	2007

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

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**May 6, 2010**

**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, Michael S. Fahlbeck contends that his house is worthless because of a pending lawsuit that has prevented him from connecting utilities and finishing construction of an attached garage. Because that lawsuit was not filed until after the assessment date under appeal, it could not have affected the property’s true tax

value on that date. And Mr. Fahlbeck did not offer any probative evidence to quantify the house's market value-in-use. The Board therefore finds for the Elkhart County Assessor.

### **Procedural History**

2. On March 10, 2008, Mr. Fahlbeck filed a written notice with the Osolo Township Assessor contesting the subject property's March 1, 2007, assessment. On October 16, 2008, the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination making no change to that assessment.
3. Mr. Fahlbeck then timely filed a Form 131 petition with the Board. The Board has jurisdiction over Mr. Fahlbeck's appeal under Indiana Code §§ 6-1.1-15 and 6-1.5-4-1.
4. On December 22, 2009, the Board's Administrative Law Judge, Patti Kindler ("ALJ"), held a hearing on Mr. Fahlbeck's appeal. Neither the Board nor the ALJ inspected the subject property.

### **Hearing Facts and Other Matters of Record**

5. The following people were sworn in as witnesses:
  - Michael S. Fahlbeck
  - Cathy Searcy, Elkhart County Assessor
6. The Petitioner submitted the following exhibits:
  - Petitioner Exhibit 1: Tax payment history with handwritten notes and tape from what appears to be an adding machine or calculator, 2009 reconciliation tax bill and copy of check to the Elkhart County Treasurer
  - Petitioner Exhibit 2: Document from City of Elkhart Engineering regarding water tap fee
  - Petitioner Exhibit 3: On Site Inspection Record for "Mechanical" Construction
  - Petitioner Exhibit 4: Subject Property's 2006 tax statement with handwritten notes
  - Petitioner Exhibit 5: Building permit dated September 7, 2006
  - Petitioner Exhibit 6: Printout of court's minute entries (1 page)

- Petitioner Exhibit 7: Notice entry from Elkhart Superior Court No. 2 for *Bucklen et. al. v. Fahlbeck*, Cause No. 20D02-0705-PL-00033, June 25, 2009, order in *Bucklen et. al. v Fahlbeck*
- Petitioner Exhibit 8: Card from Elkhart County Sheriff's Department, copies of business cards for Duane Burrow, James Snyder, and Jeffrey Phillips with handwritten notes
- Petitioner Exhibit 9: Copy of August 29, 2007, photograph of subject property
- Petitioner Exhibit 10: Invoice from B. Doriot & Associates, Inc.
- Petitioner Exhibit 11: Photograph of subject home with nearby nursing home
- Petitioner Exhibit 12: Plat of subject site
- Petitioner Exhibit 13: Copy of Elkhart County Treasurer's invoice dated July 31, 2009 with handwritten notes<sup>1</sup>

7. The Respondent submitted the following exhibits:

- Respondent Exhibit 1: Form 113/Mr. Fahlbeck's written appeal notice
- Respondent Exhibit 2: MLS listing for the subject property
- Respondent Exhibit 3: Property record card for the subject property
- Respondent Exhibit 4: Photograph of the subject property

8. The Board recognizes the following additional items as part of the record of proceedings:

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Hearing sign-in sheet
- Board Exhibit D: Assessor's request for continuance of October 14, 2009 hearing
- Board Exhibit E: Board's grant of requested continuance

9. The subject is a residential property located at 23975 Manor Lane in Elkhart, Indiana.

10. The PTABOA determined the following values for the subject property:

Land: \$26,600                      Improvements: \$57,900                      Total: \$84,500

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<sup>1</sup> On May 3, 2010, the Board received a letter from Mr. Fahlbeck in which he enclosed the following: (1) an aerial photograph from <http://elkhartin.gisonline.com/>, (2) a copy of an April 12, 2010, Order on Permanent Injunction issued by the Judge for the Elkhart Superior Court No. 2 in *In re: Bryan Bucklen and Michael Fahlbeck* Cause No. 20D02-0705-PL-00033, and (3) a copy of the Board's March 22, 2010, Order for Extension of Time in this appeal. The Board's procedural rules provide that no post-hearing evidence will be accepted unless requested by the ALJ or the Board. 52 IAC 2-8-8(a). Neither the Board nor the ALJ requested post-hearing evidence in this case. In any event, a party submitting post-hearing evidence must serve all other parties with that submission. 52 IAC 2-8-8(c); *see also* 52 IAC 2-3-4(a) (requiring all documents filed with the Board to be served on all parties). And Mr. Fahlbeck's letter does not indicate that he served the Assessor. The Board therefore does not consider Mr. Fahlbeck's post-hearing submission in deciding his appeal.

11. On the Form 131 petition, Mr. Fahlbeck requested the following assessment:  
Land: \$20,000            Improvements: \$0            Total: \$20,000

### **Administrative Review and the Parties' Burdens**

12. 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).
13. 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").
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent 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. Fahlbeck's Contentions**

15. In the fall of 2006, Mr. Fahlbeck moved the subject house from its former site three blocks away to its present location. *Fahlbeck testimony*. He got the house from Gary Price,<sup>2</sup> who had bought a large chunk of land off County Road 113 and put in the "Super Space Company" where people can park boats and recreational vehicles. The house sat on the edge of that land near the road. *Id.* Mr. Price wanted to get rid of the house, so he

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<sup>2</sup> Mr. Fahlbeck also testified that he bought the house from Century 21, where Mr. Fahlbeck worked as a realtor. *Fahlbeck testimony*. Mr. Fahlbeck later testified that he bought the subject lot from Century 21. *Id.* Given the detail in his testimony about obtaining the house from Mr. Price, the Board infers that Mr. Fahlbeck simply misspoke when he said he bought the house from Century 21 and that he was really referring to the subject lot.

told Mr. Fahlbeck's wife, who's maiden name was also Price, that the Fahlbecks could have the house if they moved it, dug out its basement, and removed all the cement. *Id.* Mr. Fahlbeck thought "wow, a free house." *Id.* When he visited the house, it had white carpets and motion lights, and it looked like it had "barely been lived in." *Id.*

16. Mr. Fahlbeck dug out the basement and removed all the cement at a cost of \$10,000. *Id.* He then paid \$18,000 to move the house to its current location and about \$7,000 - \$8,000 for its new basement foundation. *Id.* On September 7, 2006, he got a building permit that was valid for one year. He set the house on its new foundation in the spring of 2007. He also began building an attached garage. *Id.*
17. After Mr. Fahlbeck started building the garage, he learned that some of the neighbors had filed a lawsuit against him for violating neighborhood covenants. *Fahlbeck testimony; Pet'r Exs. 6-7.* Although Mr. Fahlbeck did not describe those covenants, he testified that the neighbors thought that the house (1) was a "HUD house," (2) was not in "harmony" with the rest of the neighborhood, and (3) had an inferior roof pitch. *Id.* He also testified that the neighbors were suing him over how the house was positioned on the lot. *Id.* As of the date of the Board's hearing, the neighbors' lawsuit was still pending. *Id.*
18. The Elkhart County Building Commissioner refused to renew Mr. Fahlbeck's building permit. Mr. Fahlbeck believes that the commissioner's refusal was somehow tied to the lawsuit. *See Fahlbeck testimony.* In any event, Mr. Fahlbeck can neither finish building the garage nor hook the house up to utilities. The home therefore remains unfinished and unoccupied, and it is susceptible to ongoing vandalism. *Id.* Mail has been stolen from the mailbox, and someone threw rocks against the siding and through the front window. *Id.; Pet'r Ex. 8.*
19. According to Mr. Fahlbeck, the neighbors' lawsuit and the building commissioner's related decision not to renew Mr. Fahlbeck's building permit, have made the subject house worthless. If Mr. Fahlbeck loses the lawsuit, he may have to demolish both the house and the partially constructed garage. At a minimum, he would have to move the

house elsewhere. *Fahlbeck testimony*. The cost to return the site to a bare piece of land would be significant, which further detracts from the property's value. *Id.* Thus, Mr. Fahlbeck claims that the subject property should be assessed only for the land's value. In that vein, Mr. Fahlbeck asked for what he described as a "developer's position," under which he would pay taxes only on the land until the house is occupied. *Fahlbeck argument*. Another assessor did that for a property that Mr. Fahlbeck owns in Napanee. *Fahlbeck testimony*

## **B. The Assessor's Contentions**

20. While the Assessor understands that Mr. Fahlbeck is in a "terrible" situation, Mr. Fahlbeck did not offer any market value evidence to warrant reducing the subject property's assessment. *Searcy argument*.
21. The subject property's record card shows that the house is only 80% complete because it is not yet in livable condition. *Searcy testimony; Resp't Ex. 3*. The house was actually built in 1967, so its assessment also includes depreciation. *Searcy testimony; Resp't Ex. 3*. And the property's record card lists a trending factor of .83, which shows that house's assessment is 17% less than an average home. *Searcy testimony; Resp't Ex. 3*.
22. Despite his claim that the subject house is worthless, Mr. Fahlbeck tried to sell the subject property for significantly more than the amount for which it was assessed. Thus, on June 7, 2007, he listed the property with MLS for \$138,000. *Searcy testimony; Resp't Ex. 2*.

## **Discussion**

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

market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15.

Indiana assessing officials generally use the 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 ("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.
25. Mr. Fahlbeck did not make a prima facie case to rebut the presumption that the subject property was accurately assessed. He claimed that the subject house was worthless, pointing to the pending lawsuit and lack of a building permit that prevent him from finishing the house for occupancy. The fact that the house is unfinished and that there may be obstacles to finishing it undoubtedly affect the subject property's value. But the subject property must be valued as it existed on the assessment date. And Mr. Fahlbeck did not testify that those obstacles to finishing the house existed on March 1, 2007. In fact, the lawsuit's cause number—20D02-0705-PL-00033—indicates that the suit was not filed until May 2007. *See Pet'r Ex. 7*; IND. ADMINISTRATIVE RULE 8(B)(2)(providing that the second group of four digits in a cause number represent the year and month of filing).<sup>3</sup> Similarly, Mr. Fahlbeck's building permit did not expire until September 2007.

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<sup>3</sup> The permanent injunction order that Mr. Fahlbeck submitted after the hearing indicates that the neighbors filed their Verified Complaint for Injunction and other Relief on April 20, 2007. As explained in footnote 1, the Board does not consider that order as evidence in this appeal. Regardless, the filing date listed in the order was still more than a month after the assessment date under appeal.

26. Mr. Fahlbeck's request that he be given a "developer position" on the property fares no better. Mr. Fahlbeck did not elaborate on that point except to say that an assessor had allowed him to forego paying taxes on a different house in Nappanee until that house was occupied. Mr. Fahlbeck failed to point to any legal authority for his claim, and the Board is not aware of any. Indiana Code § 6-1.1-4-12 does provide for something commonly known as the "developer's discount," but that statute addresses when an assessor can reassess certain land held by land developers. *See* Ind. Code § 6-1.1-4-12(a) (b) and (h). It does not shield improvements from assessment; to the contrary, the statute provides "[i]f improvements are added to real property, the improvements shall be assessed." I.C. § 6-1.1-4-12(e).<sup>4</sup>
27. Unfortunately, Mr. Fahlbeck took an all-or-nothing approach. He did not offer an intermediate position between the subject property's current assessment and his claim that the improvements should not be assessed at all. Indeed, Mr. Fahlbeck offered no probative evidence to quantify the property's market value-in-use. Mr. Fahlbeck did testify on cross examination about how much money he spent to: (1) obtain the house, (2) transport it to its current location, and (3) build its basement foundation. Those costs, however, were not probative of the property's market value-in-use. First, Mr. Fahlbeck explained that the previous owner, Gary Price, did not market the house. Instead, Mr. Price, who used the land where the house had been situated for commercial purposes, contacted Mr. Fahlbeck's wife in an effort to get rid of the house. Second, by noting that his wife's maiden name was also Price, Mr. Fahlbeck implied that she and Mr. Price were related. Thus, the Board infers that the transaction was not at arm's length. Finally, Mr. Fahlbeck's own description of the house and the transaction indicated that he thought he was getting quite a deal.

#### **SUMMARY OF FINAL DETERMINATION**

28. Mr. Fahlbeck failed to make a prima facie case. The Board therefore finds for the Assessor.

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<sup>4</sup> There are various other reasons why the developer's-discount statute does not apply. For example, Mr. Fahlbeck failed to offer any evidence that he was a land developer as defined by the statute. *See* I.C. § 6-1.1-4-12(a)(defining a land developer as "a person that holds land for sale in the ordinary course of the person's trade or business.").



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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>