

REPRESENTATIVE FOR PETITIONERS:

Amos Bauman, *pro se*

REPRESENTATIVE FOR RESPONDENT:

F. John Rogers, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Amos & Mary Alice Bauman	)	Petition No.:	02-075-06-1-5-02205
	)		
Petitioners,	)	Parcel No.:	021127129001000075
	)		
v.	)	County:	Allen
	)		
Allen County Assessor,	)	Township:	Aboite
	)		
Respondent.	)	Assessment Year:	2006

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

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**October 27, 2008**

**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. Amos and Mary Alice Bauman claim that their rental property should be assessed using the income-capitalization approach to value. Choosing an appropriate capitalization rate, however, is central to that approach. Because Mr. Bauman did not explain how he chose

the capitalization rate that he used to estimate the property's value, the Board denies the Baumans' appeal.

### **PROCEDURAL HISTORY**

2. The Baumans filed a written request asking the Allen County Property Tax Assessment Board of Appeals ("PTABOA") to reduce their property's assessment. On October 24, 2007, the PTABOA issued its determination denying the Baumans' request. The Baumans disagreed with that determination and timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Baumans' appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. On July 31, 2008, Jennifer Bippus, the Board's designated Administrative Law Judge ("ALJ"), held a hearing in Ft. Wayne, Indiana.
4. The following people were sworn in as witnesses:

For the Baumans:

Amos Bauman

For the Allen County Assessor:

Carolyn Berghorn, Aboite Township Assessor<sup>1</sup>  
Laura Boltz, Deputy County Assessor

5. The Baumans offered the following exhibits:

Petitioners Exhibit 1: Questionnaire for Allen County residential rental properties completed by Mr. Bauman,  
Petitioners Exhibit 2: Receipt from Culligan of Fort Wayne,  
Petitioners Exhibit 3: Lawn-mowing estimate from Jon Baker,

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<sup>1</sup> The Allen County Assessor filed two documents authorizing the Aboite Township Assessor to represent her at the hearing. *Board Exs. C-D*. Although one of those documents was titled Notice of Township Assessor Appearance as an Additional Party, the body of that document says nothing about the Aboite Township Assessor seeking to intervene as a party. We therefore do not address whether the Aboite Township Assessor had the right to intervene as a party.

- Petitioners Exhibit 4: Quote from Rent-A-Center for refrigerator, electric range, and dishwasher,
- Petitioners Exhibit 5: Pages 15-22 from “Navigating the Property Maze” prepared by Barry Wood of the Department of Local Government Finance (“DLGF”),
- Petitioners Exhibit 6: Schedule E, Supplemental Income and Loss from the Baumans’ 2006 federal tax return,
- Petitioners Exhibit 7: Photograph of the subject property’s utility room,
- Petitioners Exhibit 8: List of owner’s expenses for the property and a value conclusion,
- Petitioners Exhibit 9: Printout of “Capitalization rate explained” from LOANUNIVERSE.com  
<http://www.loanuniverse.com/capitalization.html>,<sup>2</sup>

6. Twelve days after the hearing, the Baumans sent additional documents to the Board. The Board did not request those documents and it does not consider them in making its determination. *See* IND. ADMIN. CODE tit. 52, r. 2-8-8(a) (“No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board.”). Also, it does not appear that the Baumans served the Assessor or her representative with copies of those documents as required by the Board’s procedural rules. *See* 52 IAC 2-3-4(a).<sup>3</sup>

7. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Photographs of rental home,
- Respondent Exhibit 2: Photograph of barn,
- Respondent Exhibit 3: GIS view of the Baumans’ property,
- Respondent Exhibit 4: Appeal form filed with Aboite Township,
- Respondent Exhibit 5: Property record card (“PRC”) for the Baumans’ property,
- Respondent Exhibit 6: Questionnaire for Allen County residential rental properties,
- Respondent Exhibit 7: Schedule E, Supplemental Income and Loss from the Baumans’ 2004 - 2006 federal tax returns,
- Respondent Exhibit 8: Memo from the DLGF dated November 20, 2003,
- Respondent Exhibit 9: Map of Allen County rent-class boundaries,
- Respondent Exhibit 10: Allen County residential rent model for 2006 assessment year,
- Respondent Exhibit 11: Sales use in determining gross rent multipliers (“GRMs”) for 2006,

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<sup>2</sup> Following closing arguments, Mr. Bauman offered this printout to explain how he came up with his capitalization rate. While Mr. Bauman did not identify the printout as a separate exhibit, the ALJ marked it as Petitioner Exhibit 9.

<sup>3</sup> Copies of those documents are attached to a separate notice disclosing them to the Assessor. The Board is issuing that notice at the same time as these findings and conclusions.

- Respondent Exhibit 12: Aboite Township's calculation for 10319 Liberty Mill Road,
- Respondent Exhibit 13: December 4, 2006 sales disclosure for two acres that the Baumans sold for \$70,000,
- Respondent Exhibit 14: Form 115,
- Respondent Exhibit 15: Final Conclusion from the PTABOA,
- Respondent Exhibit 16: Property addresses, monthly rents, and sale prices.

8. The Board does not consider Respondent's Exhibit 16 in reaching its decision. The Assessor offered that exhibit after Mr. Bauman argued that Respondent's Exhibit 11, which listed the sales upon which the Assessor based her GRM analysis, did not contain property addresses. Because Respondent's Exhibit 16 contains rental information for each address, the Assessor asserted that it was confidential. Thus, it offered the exhibit to the ALJ but did not provide it to Mr. Bauman.
9. Although Mr. Bauman did not object, admitting an exhibit without Mr. Bauman having the opportunity to see it would deprive the Baumans of their right to due process. There may have been various ways for the Assessor to allow Mr. Bauman to see the exhibit while still protecting the confidential information contained in it. For example, the Assessor could have sought an appropriate protective order prohibiting Mr. Bauman from disclosing that information to third parties. Simply preventing Mr. Bauman from seeing the exhibit, however, was not permissible.
10. The Board recognizes the following additional items as part of the proceeding's record:
  - Board Exhibit A – Form 131 petition and attachments,
  - Board Exhibit B – Notice of hearing,
  - Board Exhibit C – Notice of Township Assessor Representation,
  - Board Exhibit D – Notice of Township Assessor Appearance as Additional Party,
  - Board Exhibit E – Appearance of counsel for the Assessor,
  - Board Exhibit F – Hearing sign-in sheet.
11. The Baumans' property contains a single-family home and barn sitting on 1.4660 acres of land. It is located at 10319 Liberty Mills Road, Fort Wayne.
12. Neither the Board nor the ALJ inspected the Baumans' property.

13. The PTABOA listed the following values for the property:  
Land: \$44,800      Improvements: \$79,600      Total: \$124,400
14. On their Form 131 petition, the Baumans requested a total assessment of \$90,000 or less. At the hearing, Mr. Bauman said that he thought the property was worth “somewhere around \$100,000 or less” and offered an estimate of \$85,000 that he calculated by capitalizing the property’s net income.

## ANALYSIS

### Parties’ Contentions

#### A. The Baumans’ Contentions

15. The Baumans rent-out their property. It should therefore be assessed based on its income. But the property should be valued by capitalizing its net income instead of applying a gross-rent multiplier (“GRM”), which was what the Aboite Township Assessor did. *A. Bauman testimony*. The GRM does not account for property taxes while capitalizing net income does. *Id.*
16. Rental properties must be assessed using the method that yields the lowest value. While the GRM is the recommended method, one can also capitalize a rental property’s net operating income. Barry Wood of the Department of Local Government Finance confirmed that fact. *A. Bauman testimony; Pet’rs Ex. 5.*
17. To estimate the value of the Baumans’ property, Mr. Bauman divided \$6775.27—which he determined to be its net income—by a capitalization rate of 8%. *Bauman testimony; see also Pet’rs Ex. 8.* He determined the property’s net income by combining the monthly rent that the Baumans’ tenant paid for 2006 (\$525) with the value of other services and items that the tenant supplied. All told, that amounted to \$992.57 per month, which was to close the \$991 per month that the Assessor claimed was the property’s market rent. It is not clear whether Mr. Bauman agreed that the property’s

rent should include the items and services supplied by the tenant, because as he testified “I still don’t have all those things in there.” *Bauman testimony*. He also noted that he could not test the Assessor’s estimate for market rent, because he was not provided with addresses of the properties that the Assessor used in making its market-rent estimate. *Id.* Regardless, he used the Assessor’s \$991 per month rent estimate in his calculation. Mr. Bauman then subtracted various expenses, some of which he allocated between three different rental properties, to arrive at the property’s annual net income. *Bauman testimony; Pet’rs Ex. 8*. Mr. Bauman did not similarly explain how he chose his 8% capitalization rate. *See Bauman testimony; Pet’rs Exs. 1-9*.

18. Various factors detract from the property’s value. The house includes a 288-square-foot utility room. That is unusual for a house that has only 1502 square feet of living area, and it makes the other rooms seem smaller. *Bauman testimony*. The property is on well water, which is why the Baumans’ tenant supplies water softener. While the Assessor increased the property’s value because of the additional ground and barn behind the house, those things actually hurt the property’s value. Nothing can be done with them. Also, the property is located on a heavily travelled road. *Bauman testimony*.

## **B. The Assessor’s Contentions**

19. The Baumans did not make a prima facie case, because they simply challenged the methodology used to compute their property’s assessment. Both the Indiana Tax Court and the Board have rejected similar claims. *Rogers argument*.
20. Regardless, the property was properly assessed using a GRM. The Assessor followed a memorandum from the Department of Local Government Finance (“DLGF”) titled “Income Approach to Value on Single-family and Small Multi-family Properties.” *Boltz testimony; Resp’t Ex. 8*. To determine an appropriate GRM, the Assessor divided single-family rental properties into four classes. Based on sales data, she then determined an average GRM for each class. For the Bauman’s class, that GRM was 8.65. *Boltz testimony; Resp’t Exs. 8- 11*.

21. The Assessor then stratified each class by size, age, condition, and grade to estimate the market rent for properties within the class. That estimate assumed that landlords provided a washer, dryer, dishwasher, refrigerator, and stove. *Boltz testimony*. Based on those factors, the Assessor estimated that the market rent for the Baumans' house was \$991 per month, or \$11,892 per year. *Id.*
22. The Assessor multiplied that market rent by the appropriate GRM (8.65) to arrive at a value of \$102,900. She then added the cost of the Baumans' excess land and barn and arrived at a total assessment of \$124,400. *Boltz testimony; Resp't Exs. 11-12.*

## CONCLUSIONS OF LAW AND ANALYSIS

### Burden of Proof

23. A taxpayer seeking review of an assessing official's determination must establish 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). If a taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut 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. But the burden of persuasion remains at all times with the taxpayer. *Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
24. The taxpayer's burden of proof must be viewed in the context of Indiana's assessment system. 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). The appraisal profession traditionally has 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 a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

25. 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.

26. Indiana Code § 6-1.1-4-39 contains special provisions for valuing rental properties. If a property has more than four qualifying rental units, its true tax value is the lowest value determined by applying each of three valuation approaches: the cost, sales-comparison and income-capitalization approaches. IND. CODE § 6-1.1-4-39(a). The GRM method, however, is the preferred method for valuing properties with between one and four rental units. I.C. § 6-1.1-4-39(b).

#### **A. Mr. Bauman's Estimate Under the Income-Capitalization Approach**

27. The Baumans claim (1) that their property should be assessed using the valuation method that yields the lowest value and (2) that an approach that divides the property's net income by an appropriate capitalization rate should be preferred over the GRM approach,

because, unlike the GRM approach, it accounts for taxes and other expenses that reduce a property's income.

28. The Baumans' first claim is simply wrong. While Ind. Code § 6-1.1-4-39(a) says that a rental property's true tax value is the lowest among the values yielded by the cost, sales-comparison, and income-capitalization approaches, that section applies only to properties with more than four rental units. And the Baumans have identified only one rental unit on their property.
29. The answer to their second claim is a little more complicated. Indiana Code § 6-1.1-4-39(b) says that the GRM is the *preferred* method for valuing rental properties with fewer than four units. Thus, the Baumans' are wrong when they argue that capitalizing their property's net income was an inherently superior way to value their property. Nonetheless, while that statute may bear upon how the Board should weigh two otherwise reliable value estimates—one computed using a GRM and the other computed using a different generally accepted valuation approach—it does not preclude taxpayers from using generally accepted approaches besides the GRM to prove their property's true tax value.
30. The Board therefore turns to the value estimate that Mr. Bauman arrived at by capitalizing his property's net income. The income-capitalization approach assumes that a potential buyer will pay no more for a property than it would cost to purchase an equally desirable substitute investment offering the same risk and return. MANUAL at 14. Mathematically, it is expressed as  $\text{Income} \div \text{Rate} = \text{Value}$ . *Id.* Because a capitalization rate reflects the return that an investor requires in light of a proposed investment's risks, it is integral to the income approach. And as the equation's denominator, it greatly influences any ultimate value estimate.
31. A person applying the income-capitalization approach therefore must use great care in choosing a capitalization rate. That rate should generally reflect the annual rate of return necessary to attract investment capital. *Hometown Associates, L.P. v. Maley*, 839 N.E.2d

269, 275 (Ind. Tax Ct. 2005). Many factors influence the rate, including “apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters.” *Id.* (quoting *Lacy Diversified Industries, LTD. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003)).

32. Mr. Bauman considered none of those factors in choosing his capitalization rate. He simply used a rate of 8% without explaining how he arrived at that number. At most, he offered a document that he downloaded from LOANUNIVERSE.com. Instead of supporting Mr. Bauman’s chosen rate, that document stresses the need for investors to validate capitalization rates used by appraisers. It also describes a capitalization rate as a “combination of the interest that you will pay the Bank, and the required rate of return you demand for your investment.” *Pet’rs Ex. 9*. As an example, the document uses a hypothetical example where an investor will fund 75% of a property’s purchase with a loan at 9.5% and expects a 10% return. According to the document, then the investor should use a capitalization rate of 9.63%. *Id.* Mr. Bauman, however, offered no evidence about interest rates or the return expected by investors on rental homes in the Fort Wayne area.
33. Because Mr. Bauman did not explain how he chose his capitalization rate, he failed to show that his value estimate complied with generally accepted appraisal principles.

#### **B. The Baumans’ Other Claims**

34. The Baumans also pointed to four factors that they believe lower their property’s value: (1) it does not have access to city water, (2) it sits on a heavily traveled road, (3) it has excess land and a barn, and (4) its house has an oversized utility room. The Baumans, however, offered no evidence to quantify how those facts affected the property’s market value-in-use. Those facts therefore do not suffice to make a prima facie case that the property’s assessment is wrong.

## SUMMARY OF FINAL DETERMINATION

35. The Baumans failed to make a prima facie case. Because Mr. Bauman did not explain how he chose the rate that he used to capitalize the net income of the Bauman's property, the Board gives no weight to his valuation estimate. And the Baumans offered no other market-based evidence to quantify the property's value. The Board therefore finds for the Allen County Assessor.

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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Commissioner, 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. 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. 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>>