

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

Petition #'s: 43-034-03-1-6-00007
43-034-03-1-6-00006
43-034-03-1-6-00005
43-034-03-1-6-00004
43-034-03-1-6-00003
43-034-03-1-6-00002
43-034-03-1-6-00001

Petitioner: Windstar Park, Inc.

Respondent: Harrison Township Assessor (Kosciusko County)

Parcel #'s: 1340423139
1340223121
1340423144
1340423135
1340423145
1340423159
1340223122

Assessment Year: 2003

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 Petitioner initiated seven assessment appeals with the Kosciusko County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated April 13, 2004.
2. The Petitioner received notices of the decisions of the PTABOA on October 21, 2004.
3. The Petitioner filed seven appeals to the Board by filing Form 131 petitions with the county assessor on November 19, 2004. The Petitioner elected to have these cases heard in small claims.

4. The Board issued notices of hearing to the parties dated January 31, 2006.
5. The Board held administrative hearings on April 26, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Keith Harris, Owner
Jeanette Harris, Owner
 - b. For Respondent: Laurie Renier, Kosciusko County Assessor¹
Charles A. Ker, PTABOA Member
Susan Myrick, PTABOA Member
Gerald Bitner, PTABOA Member
Richard R. Shipley, PTABOA Member
 - c. Others in Attendance: Jan Chiddister²

Facts

7. The subject properties under appeal are annually assessed mobile homes located in Windsor Park at 3529 West 100 South, Warsaw, in Harrison Township. Petition No. 43-034-03-1-6-00007 is a 1986 Skyline home, 14' x 72' on Lot 1. Petition No. 43-034-03-1-6-00006 is a 1980 Shannon home, 14' x 70' on Lot 3. Petition No. 43-034-03-1-6-00005 is a 1985 Liberty home, 16' x 80' on Lot 4. Petition No. 43-034-03-1-6-00004 is a 1986 Commodore home, 14' x 70' on Lot 7. Petition No. 43-034-03-1-6-00003 is a 1989 Holly Park home, 14' x 70' on Lot 14. Petition No. 43-034-03-1-6-00002 is a 1973 Holly Park home, 14' x 70' on Lot 15 and Petition No. 43-034-03-1-6-00001 is a 1985 Holly Park home, 14' x 70' on Lot 20.
8. The ALJ did not conduct an on-site visit of the subject properties.

¹ Ind. Code § 6-1.1-15-3(a) (2005), which governs petitions for review to the Board, states, in pertinent part, “[a] township assessor, county assessor, member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals that made the original determination under appeal under this section is a party to the review under this section to defend the determination”. In this appeal, it is the township assessor’s original official determination which is under review. *See Board Exhibit A*. There are two ways that a county assessor, whose original official determination is not under review, may appear. The first way is to appear as a separate party. Ind. Code § 6-1.1-15-4(p) (2004); Ind. Admin. Code tit. 52, r. 2-6-6(a) (1) (2004). The second way to appear is as an authorized representative of the township assessor. Ind. Admin. Code tit. 52, r. 2-3-2(b) (2004); Ind. Code § 6-1.1-15-4(p). In either instance, the county assessor, or any other person wishing to appear, must file a notice of appearance. Ind. Admin. Code tit. 52, r. 2-3-2(b); Ind. Admin. Code tit. 52, r. 2-6-6(b) (1). In this appeal, the county assessor failed to file a notice of appearance. However, because the county assessor is authorized to appear either as a separate party or as an authorized agent of the township assessor, and because there was no objection to the county assessor appearing as a party, the Board will evaluate the claims raised on behalf of the Respondent in this appeal.

² Ms. Chiddister was present at the administrative hearing, but was not sworn in to present testimony.

9. The PTABOA determined the assessed values for the annually assessed mobile homes to be \$14,790 for the Lot 1 mobile home; \$7,560 for the Lot 3 mobile home; \$15,500 for the Lot 4 mobile home; \$14,490 for the Lot 7 mobile home; \$13,760 for the Lot 14 mobile home, \$7,290 for the Lot 15 mobile home; and \$12,980 for the Lot 20 mobile home.
10. The Petitioner requested the assessed values for the annually assessed mobile homes to be \$4,500 for the Lot 1 mobile home; \$4,500 for the Lot 3 mobile home; \$4,500 for the Lot 4 mobile home; \$4,500 for the Lot 7 mobile home; \$4,500 for the Lot 14 mobile home, \$4,000 for the Lot 15 mobile home; and \$4,500 for the Lot 20 mobile home.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioner argues that, based on his 25 years of experience, the seven mobile homes under appeal are assessed in excess of their market values. *K. Harris argument; Petitioner Exhibit 7.*
 - b. In support of this contention, the Petitioner submitted an adjusted retail value for each mobile home under appeal using the N.A.D.A. Manufactured Housing Appraisal Guide (N.A.D.A. Guide). *Petitioner Exhibit 2.* The Petitioner testified that the N.A.D.A. Guide is dated January through April 2006. *K. Harris testimony; Petitioner Exhibit 6.* The Petitioner further testified that the manufacturer of the mobile homes, the trade names of the mobile homes, the model years, the sizes and conditions were used to calculate the value for each mobile home under appeal. *Id.* The Petitioner asserts that according to the N.A.D.A. Guide, the values of the mobile homes after adjustments should be \$6,968.09 for the Lot 1 mobile home; \$7,641.80 for the Lot 3 mobile home; \$6,850.53 for the Lot 4 mobile home; \$6,850.53 for the Lot 7 mobile home; \$8,686.45 for the Lot 14 mobile home, \$5,604.16 for the Lot 15 mobile home; and \$7,939.23 for the Lot 20 mobile home. *K. Harris testimony; Petitioner Exhibit 2.*
 - b. The Petitioner also submitted estimates prepared by Mr. Joe Callaghan, Fahl Manufactured Homes, of the values for each of the mobile home on appeal. *Petitioner Exhibit 3.* Mr. Callaghan estimated the value of six of the mobile homes to be \$4,500 for the Lot 1 mobile home; \$4,500 for the Lot 3 mobile home; \$4,500 for the Lot 4 mobile home; \$4,500 for the Lot 7 mobile home; \$4,500 for the Lot 14 mobile home, \$4,000 for the Lot 15 mobile home; and \$4,500 for the Lot 20 mobile home. *Id.*
 - e. Finally, the Petitioner submitted an insurance document from EMC Insurance Company, dated September 21, 2004, showing that the seven mobile homes under

appeal were insured for \$3,000 each from November 1, 2004 through November 1, 2005. *Petitioner Exhibit 4.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends the subject mobile homes are properly assessed. *Renier testimony.* The Respondent argues that the mobile homes in Kosciusko County are valued using the cost schedules from the 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) and the 2002 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES) as instructed by the Department of Local Government Finance. *Renier testimony; Respondent Exhibits 3 & 4.*
- b. In further support of the assessed value, the Respondent provided fifteen "comparable" mobile homes that sold from January 2003 through January 2006 for \$6,450 to \$47,900. *Renier testimony; Respondent Exhibit 2.* The Respondent testified that the subject mobile homes range in assessed values from \$7,290 to \$15,500. *Renier testimony.* Thus, the Respondent concludes, mobile homes are assessed fairly. *Id.*
- c. The Respondent contends that the Board should not rely on the Petitioner's calculations that used the N.A.D.A. Guide to establish market value. *Renier testimony; Petitioner Exhibit 2.* According to the Respondent, the N.A.D.A. Guide values a mobile home specifically to the data that is used, for example the values can differ based on the trade name, the region the mobile home is located in, the condition, and the mobile home's components and accessories. *Renier testimony.* The Respondent similarly argued that the insurance document submitted by the Petitioner is not probative of the market value-in-use of the mobile homes under appeal. *Id.*

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 STB 5165,
- c. Exhibits:

Petitioner Exhibit 1 – Form 131 petitions,³

³ The Petitioner submitted Petitioner Exhibits 1 through 5 separately as it pertains to each individual mobile home under appeal. Petitioner Exhibit 6 (N.A.D.A. Manufactured Housing Appraisal Guide) and Petitioner Exhibit 7 (Summary of Petitioner's argument) pertain to all seven mobile homes under appeal.

Petitioner Exhibit 2 – N.A.D.A. Appraisal Guide for mobile home,
Petitioner Exhibit 3 – Estimated value of mobile homes, prepared by Fahl
Manufactured Homes,
Petitioner Exhibit 4 – Insurance sheet from EMC Insurance Companies,
dated September 21, 2004,
Petitioner Exhibit 5 – Notifications of Final Assessment Determinations
(Form 115s),
Petitioner Exhibit 6 – N.A.D.A. Manufactured Housing Appraisal Guide,
January through April 2006,
Petitioner Exhibit 7 – Summary of Petitioner’s Argument,

Respondent Exhibit 1 – Form 131 petitions, Form 130 petitions and
Notification of Final Assessment – Form 115’s for
the seven mobile homes under appeal,
Respondent Exhibit 2 - Multiple listing sheets for 15 mobile homes,⁴
Respondent Exhibit 3 – Version A – 2002 Real Property Assessment
Guideline, chapter 4, pages 1 through 36,
Respondent Exhibit 4 – Indiana Administrative Code 50 IAC 3.2
(Assessment of Mobile Homes),
Respondent Exhibit 5 – Annually Assessed Mobile Homes Memorandum,
prepared by the Department of Local Government
Finance, dated January 27, 2003,
Respondent Exhibit 6 – Income approach to value sheet prepared by
Kosciusko County Assessor,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

⁴ The Respondent claimed that Respondent Exhibit 2 contains confidential information protected from disclosure by Ind. Code § 24-2-3-2 and Ind. Code § 6-1.1-35-9. However, the Respondent’s exhibit is nothing more than a chart compiling MLS listings for mobile home sales. Therefore, the Board rejects the Respondent’s claim of confidentiality.

- 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 Township 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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioner argues that the mobile homes under appeal are assessed in excess of their market values. *K. Harris argument; Petitioner Exhibit 7*. In support of this contention, the Petitioner submitted an adjusted retail value for each mobile home under appeal using the N.A.D.A. Guide, an estimate of value by Fahl Manufactured Housing; and a “Scheduled Property Floater” from EMC Insurance. *Petitioner Exhibit 2*.
 - b. Annually assessed mobile homes are defined as a mobile or manufactured home that is not located on (1) a permanent foundation; or (2) land owned by the mobile home owner. 50 IAC 3.2-2-2. 50 IAC 3.2-4-1 states that “All annually assessed mobile homes assessed after January 14, 2003, shall be assessed in accordance with the methodology that the county assessor has elected, in accordance with 50 IAC 2.3-1-1, for the assessment of real property mobile homes in the county in which the mobile home is assessed.” 50 IAC 3.2-4-1(b). Thus, “If the county assessor has selected to assess real property mobile homes under the Real Property Assessment Guideline for 2002 – Version A, then the township assessor shall value annually assessed mobile homes in accordance with the guidelines for the assessment for real property mobile homes contained in the Real Property Assessment Guidelines for 2002 – Version A.” 50 IAC 3.2-4-1(c).
 - c. There is a presumption that the value determined according to the rules prescribed in the Manual is the true tax value of the subject property. The taxpayer, however, is “permitted to offer evidence relevant to the fair market value-in-use of the property to rebut such presumption and to establish the actual true tax value of the property as long as such information is consistent with the definition of true tax value provided in this manual and was readily available to the assessor at the time the assessment was made.” *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom.* “Such evidence may include actual construction costs, sales

information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles.” See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom.*

- d. In support of the Petitioner’s claim that the mobile homes at issue are over-valued, the Petitioner submitted a N.A.D.A. Book Value Form for each of the subject mobile homes. See *Petitioner Exhibit 2 (Lot Nos. 1, 3, 4, 7, 14, 15 & 20)*.⁵ In addition, the Petitioner submitted the N.A.D.A. Manufactured Housing Appraisal Guide. *Petitioner Exhibit 6*. The form, however, states that “this is not an appraisal form.” Further, the Petitioner failed to adequately explain how he derived the figures that were used on the various value forms. *Petitioner Exhibit 2 (Lot Nos. 1, 3, 4, 7, 14, 15 & 20)*. In rebuttal, the Petitioner alleged that he used the condition assigned by the township, but he did not explain how the location value was determined or how the base value was derived or why no community adjustment was made. 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 Township 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”). Further, the Petitioner’s calculation failed to address additional components and accessories, such as skirting and central air or any other components that may be contained within each mobile home. *Petitioner Exhibit 2 (Lot Nos. 1, 3, 4, 7, 14, 15 & 20)*. Moreover, the N.A.D.A. Guide used in the Petitioner’s calculations was dated January through April 2006. To be probative, the Petitioner must show how the “retail” values for 2006 demonstrate or are relevant to the subject mobile homes’ values as of January 15, 2003. See 50 IAC 3.2-4-1. Mobile homes are depreciating assets. See 50 IAC 3.2-4-2 (establishing depreciation schedules for valuing mobile homes). Therefore, the 2003 value of the mobile homes would exceed the Petitioner’s N.A.D.A. valuations. Thus, while the Petitioner’s N.A.D.A. Guide Book Value Forms suggest that the subject mobile homes may be over-valued, the Petitioner’s unexplained valuation forms valuing the mobile homes as of 2006, fail to raise a prima facie case.
- e. The Petitioner also relied on estimates of value of \$4,500 each for six of the mobile homes and \$4,000 on one mobile home from Fahl Manufactured Homes,

⁵ The January 27, 2003, Department of Local Government Finance memorandum states that if the owner of an annually assessed mobile home contacts the township assessor stating the true tax value is too high when compared to a nationally recognized pricing guide such as the NADA guide, the assessor or county PTABOA may adjust the value if there exists a better indication of true tax value than that produced by the schedules found in the 2002 Real Property Assessment Guidelines. However, the memorandum indicates the national value guides are based on “averages” and do not necessarily represent the value of any individual mobile home. Therefore, an appraisal or sale of the mobile home would be better evidence of value. *Respondent Exhibit 5*.

as evidence of the subject mobile homes market values. *See Petitioner Exhibit 3*. The estimates, however, are little more than an opinion of value that do not contain the basis of or the specific facts for these opinions. As such, the opinions of value are not probative of the market values of the subject mobile homes. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

- f. Finally, the Petitioner relied on the fact that the mobile homes carried insurance of \$3,000 each from November 1, 2004 through November 1, 2005, as evidence that the seven mobile home assessments are excessive. Again, this reliance is misplaced because there is no evidence that relates the amount of insurance to the market value-in-use of the mobile homes as of January 15, 2003. *See Long*, 821 N.E.2d at 471 (rejecting an insurance policy indicating that for the period from February 12, 2003 to February 12, 2004, the Petitioners' property was insured for \$ 56,000). Therefore the scheduled property floater is insufficient to establish a prima facie case regarding the market value of the mobile homes.
- g. Where Petitioner has not supported the claim with probative evidence, Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.