

REPRESENTATIVES FOR PETITIONER:
Renard Keal, President Horizon Homes Inc.

REPRESENTATIVES FOR RESPONDENT:
Don Thompson, Madison Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HORIZON HOMES, INC.,)	Petition for Review of Assessment,
)	Form 131
Petitioner)	
)	Petition No.: 39-010-03-1-6-00002
v.)	
)	County: Jefferson
)	
MADISON TOWNSHIP)	Township: Madison
ASSESSOR,)	
)	Parcel No.: Personal Property Mobile Home
Respondent)	
)	Assessment Year: 2003

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

February 12, 2004

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

Issue

1. The issue presented for consideration by the Board was:

Whether subject mobile home was assessed correctly.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Renard Keal, President of Horizon Homes Inc., filed a Form 131 on behalf of Horizon Homes, Inc. (Petitioner), petitioning the Board to conduct an administrative review of the above petition. The Notification of Final Assessment Determination (Form 115) of the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) was mailed on May 5, 2003. The Form 131 was filed on May 20, 2003 with the Jefferson County Assessor and received by the Board on May 23, 2003.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 19, 2003, at Madison, Indiana before Paul Stultz, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

4. The following persons were present at the hearing:

For the Petitioner:

Renard Keal, President Horizon Homes, Inc.
Stacy Imel

For the Respondent:

Gail Sims, Jefferson County Assessor
Don Thompson, Madison Township Assessor
James Martin, PTABOA member
Delores Barnes, PTABOA member

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Renard Keal
Stacy Imel

For the Respondent:

Gail Sims
Don Thompson
James Martin
Delores Barnes

6. The following exhibits were presented:

For the Petitioner:

Attached to the Form 131 Petition, filed with the Board on May 23, 2003:

Petitioner's Exhibit 1 - Form IH-14: Application For Consent to Transfer Securities Or Personal Property Of Any Description Owned By A Resident Decedent

Petitioner's Exhibit 2 - Opinion of value of subject mobile home by John Tyne, Jr., dated July 9, 2002

Petitioner's Exhibit 3 - Verified Petition to Close Insolvent Estate

Presented at the August 19, 2003 hearing before the Board:

Petitioner's Exhibit 4 - Opinion of value of subject mobile home by the Manager of Lady Liberty Homes, dated August 1, 2003

Petitioner's Exhibit 5 - Opinion of value of subject mobile home by Norman Mills, Manager LUV Homes, dated August 1, 2003

Petitioner's Exhibit 6 - Copy of Notice of Assessment of Mobile Home – Form 2 for assessment year 2003 for subject mobile home

Petitioner's Exhibit 7 - Copy of Notice of Assessment of Mobile Home – Form 2 for assessment year 2002

Petitioner's Exhibit 8 - Package of documents containing copies of the following:

- A. Notice of Hearing on Petition (Form 117)
- B. Petition to the Board for Review of Assessment, Form 131, pp. 1-2
- C. Notification of Final Assessment Determination, Form 115, pp. 1-2
- D. Petition to the PTABOA for Review of Assessment, Form 130, pp. 1-2
- E. Verified Petition to Close Insolvent Estate, p. 1
- F. Form IH-14: Application For Consent to Transfer Securities Or Personal Property Of Any Description Owned By A Resident Decedent
- G. Opinion of value of subject mobile home by John Tyne, Jr., dated July 9, 2002

For the Respondent:

Submitted by facsimile on August 8, 2003:

Respondent's Exhibit 1 - List of witnesses and exhibits

Presented at the August 19, 2003 hearing before the Board:

Respondent's Exhibit 2 - Mobile Home Assessment Worksheet

Respondent's Exhibit 3 - Copy of page 7 of presentation given by the Indiana Assessment Academy, August 2001

7. The following additional items are officially recognized as part of the record of proceedings:
 - Board's Exhibit A - Form 131 petition
 - Board's Exhibit B - Notice of Hearing on Petition
8. The subject property is a 1991 Reflection mobile home located at 3692 North Woodside Drive, Madison, Madison Township, Jefferson County. The subject mobile home is described as a 1990 model on the 2002 and 2003 Form 2s, and the Form 115. At the hearing, the parties agreed that the subject mobile home is a 1991. It should be noted, that the model year is not an issue in this appeal.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. At the hearing, the parties agreed the year under appeal is 2003 and the Assessed Value of record of the mobile home was \$11,270.

Jurisdictional Framework

11. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
12. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Property Tax System

13. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. *See* Ind. Const. Article 10, §1.
14. The former State Board of Tax Commissioners developed a new manual and guidelines to govern the 2002 reassessment. 50 IAC 2.3-1-1. The new assessment rules were

created in response to the holding of the Indiana Supreme Court in *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034 (Ind. 1998).

15. At the heart of this new manual is the definition of True Tax Value. The manual defines True Tax Value 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 in 50 IAC 2.3-1-1(b)).
16. 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. *State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341, 343 (Ind. 2002). However, the taxpayer shall be 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. *Id.* at 343-344. 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. *Id.* at 344.

State Review and Petitioner's Burden

17. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998).
18. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890 (Ind. Tax 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

19. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E.2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
20. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E.2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
21. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
22. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E.2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner’s position is correct. The petitioner has proven his position by a ‘preponderance of the evidence’ when the petitioner’s evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner’s position.]

Discussion of Issue

Whether subject mobile home was assessed correctly.

23. The Petitioner contends the mobile home should be assessed at \$4,200.

24. The Respondent contends that the assessment is correct at \$11,270.

25. The applicable rules governing this Issue are:

Real Property Assessment Manual, Book 1, Chapter 4 – Version A, Mobile and Manufactured Homes (50 IAC 2.3)

DLGF Memorandum dated January 27, 2003 regarding Annually Assessed Mobile Homes

Assessment Division, DLGF Memorandum dated July 2003 regarding Annually Assessed Mobile Homes

50 IAC 3.2 – DLGF rule for assessment of mobile homes

50 IAC 3.2-3-1

Sec. 1. (a) The township assessor of the township within which the mobile home is located shall assess the mobile home for taxation under this article.

(b) A mobile home shall be assessed as real property under 50 IAC 2.3 if the mobile home:

(1) is located on land owned by the owner of the mobile home; or

(2) is located on a permanent foundation even if the land under the mobile home is owned by someone other than the owner of the mobile home.

(c) A mobile home shall be assessed annually in accordance with the personal property rule in effect on January 15 if the mobile home is held for sale in the ordinary course of a trade or business.

(d) The township assessor shall assess mobile homes that do not meet the requirements of subsection (b) or (c), and all exterior features, yard structures, and improvements owned by the mobile home owner and located on the same parcel as the mobile home in accordance with 50 IAC 3.2-2.

50 IAC 3.2-4-1

Sec. 1. (a) Township assessors shall use the standard of true tax value as set forth in the Real Property Assessment Manual for 2002 in the assessment of annually assessed mobile homes.

(b) 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.

(c) If the county assessor has selected to assess real property mobile homes under the Real Property Assessment Guidelines for 2002–Version ‘A’, then the township assessor shall value annually assessed mobile homes in accordance with the guidelines for the assessment of real property mobile homes contained in the Real Property Assessment Guidelines for 2002–Version ‘A’.

(d) If the county assessor has selected to assess real property mobile homes under an assessment method other than that described in subsection (c) and the county assessor has obtained the approval of the department of local government finance in accordance with 50 IAC 2.3-1-1(f) for this assessment method, then each township assessor in the county shall use the alternative approved method for the assessment of annually assessed mobile homes.

(e) The procedure for submission and approval of the alternative method shall be in accordance with the 2002 Real Property Assessment Manual, Approval of Mass Appraisal Methods.

Appendix C – Residential and Agricultural Cost Schedules

Mobile Home Cost Schedules

26. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The Petitioner submitted into evidence four (4) appraisals on the subject mobile home:
 1. One by John Thyne with Luach Inc. for \$4,200. *Imel testimony and Petitioner’s Exhibit 2.*
 2. One by Norman Mills, manager of LUV Homes for \$4,000. *Imel testimony and Petitioner’s Exhibit 5.*
 3. One by the manager of Lady Liberty Homes for \$3,875. *Imel testimony and Petitioner’s Exhibit 4.*
 4. One per a Verified Petition to Close Insolvent Estate, for \$4,200. *Imel testimony and Petitioner’s Exhibit 3.*

- b. One witness stated that the subject property was purchased for \$4,200 at an estate sale but there is actually \$5,200 in the subject property. *Keal testimony.*
- c. There is still a tremendous demand for mobile homes. *Keal testimony.*
- d. Petitioner contends that the values found in the National Automobile Dealer's Association (NADA) book are fictitious numbers and do not indicate the market value of mobile homes. *Keal testimony.*
- e. Estate sales are not good indicators of market value because estate sales do not represent an arm's-length transaction. *Thompson testimony.*
- f. The Real Property Assessment Guidelines for 2002 - Version 'A' (Guidelines), Chapter 4 was used to value the subject mobile home, and it was determined that the value was too high. *Thompson testimony.*
- g. The NADA pricing book was then referred to, by taking a sampling of 10 to 15 mobile homes. It was then determined that the values per the NADA book were about 50% lower than the values found in the Guidelines. The mobile home assessments that were done per the Guidelines were decreased in the township by 50%. *Thompson testimony.*
- h. The methodology used in valuing mobile homes was consistently used countywide. *Sims testimony.*

Analysis

- 27. The Petitioner submitted into evidence three (3) appraisals (Petitioner's Exhibit 2, 4 and 5) and a Verified Petition To Close Insolvent Estate (Petitioner's Exhibit 3), to show that the value on the subject mobile home was excessive and that the mobile home should be valued between \$3,875 and \$4,200.
- 28. The Respondent testified that mobile homes were valued in the following manner:
 - a. Based on the sizes of the mobile homes, values were determined from the Real Property Assessment Manual for 2002 – Version A, Chapter 4 and Appendix C.
 - b. A sampling of these mobile home values was then compared to the values found in the nationally recognized NADA pricing guide. It was

determined that the NADA values were approximately 50% of the values found in the Manual

- c. After applying the physical depreciation, the determined True Tax Values were then reduced by 50% for every mobile home in Madison County.

- 29. Before applying the evidence to reduce the contested assessment, the Board must first analyze the reliability and probity of the evidence to determine what, if any, weight to accord it.
- 30. The Petitioner submitted three (3) exhibits, Petitioner's Exhibits 2, 4, and 5, as "appraisals" of the subject mobile home. These exhibits are, in essence, three (3) letters from local mobile home dealers.
- 31. Petitioner's Exhibit 2 is a letter from a Mr. Thyne stating the subject property "is currently valued at \$4,200.00." The appraisal method used by Mr. Thyne to determine this value, is not given. Whether the correctness or quality of the appraisal method used and whether it conforms to generally accepted appraisal practices as well as its ability to calculate market value, could not be determined. This "appraisal" is a statement of opinion of the value of the subject property and is a conclusory statement at best. Unsubstantiated conclusions do not constitute probative evidence. *See Whitley*, 704 N.E.2d at 1119.
- 32. Petitioner's Exhibit 4 is a letter from the manager of Lady Liberty Homes stating that the "appraisal" of \$3,875 is their "opinion based on our knowledge of retail potential in this area." The appraisal method used by Lady Liberty Homes, is identified as the *physical appraisal method for the retail local market value*. There was no additional evidence offered to the Board to explain what constituted the *physical appraisal method*. The Board is not aware of this appraisal method and cannot determine the method's ability to establish market value, or any other value. Whether the method used in this "appraisal" conforms to generally accepted appraisal practices is not given. There was no evidence offered to the Board to examine the correctness or quality of the appraisal. This

“appraisal” is a statement of opinion of the value of the subject property and is a conclusory statement at best. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E.2d at 1119.

33. Similarly, Petitioner’s Exhibit 5 is a letter from a Mr. Mills, Manager LUV Homes, stating the subject property’s “wholesale value” is \$4,000. The method used to obtain this value is again not given. Whether the method used in this “appraisal” conforms to generally accepted appraisal practices couldn’t be determined. There was no additional evidence offered to the Board in order to examine the correctness or quality of the “appraisal.” Mr. Mills’ “appraisal” is a statement of opinion of the value of the subject property and is a conclusory statement.
34. Petitioner’s Exhibit 3 is a Verified Petition To Close Insolvent Estate. In this exhibit Matilda Adkins, as personal representative of the estate of Maria Mason, declared to the Jefferson Circuit Court, among other things, that the subject mobile home was worth \$4,200. Ms. Adkins expressed the opinion that the subject mobile home is worth \$4,200 in Item #4 of Petitioner’s Exhibit 3. This opinion is not supported by any documentation nor is Ms. Adkins expertise in appraising or determining value stated.
35. In addition, the Petitioner testified that the subject mobile home was purchased, at an “estate sale,” for \$4,200. Item #5 in Petitioner’s Exhibit 3 shows that Ms. Mason owed the Petitioner \$3,200 in lot rent. It also shows that the Petitioner offered to pay the sum of \$1,000 for the subject mobile home and to absorb the lot rental of \$3,200, equaling \$4,200. This type of sale (estate) involves non-market conditions and is not an indicator of the fair market value in use of the subject mobile home.
37. Adjustments for conditions of sale usually reflect the motivations of the buyer and the seller. In many situations the conditions of sale significantly affect transaction prices; these are not considered arm-length transactions. When non-market conditions of sale are detected in a transaction, the sale can be used as a comparable but only with great care. The circumstances of the sale must be thoroughly researched before an adjustment is made, and the conditions must be adequately disclosed in the appraisal. Any

adjustment must be well supported with data. If the adjustment cannot be supported, the sale probably should be discarded.

38. The Petitioner also alleged the value per the NADA book is a fictitious number and does not indicate the market value of mobile homes. Petitioner did not introduce any evidence to support this allegation. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley*, 704 N.E.2d at 1113 (Ind. Tax 1998) and *Herb*, 656 N.E.2d 1230 (Ind. Tax 1998).
39. The Petitioner could have presented comparable sales of mobile homes similar to the subject, showing that the market value of the subject property was being treated differently. However, the Petitioner did not submit such information for consideration.
40. A Memorandum from the Assessment Division of the DLGF dated July 2003, entitled ANNUALLY ASSESSED MOBILE HOMES, allowed assessors to adjust a value of an annually assessed mobile home if there should exist a better indication of true tax value than that found in the schedules in the 2002 Manual. *See also* 50 IAC 3.2.
41. The amended method used by the local assessors to value mobile homes in Jefferson County is explained in ¶29. As stated in 50 IAC 2.3 and 50 IAC 3.2, assessors may amend their selection of method of assessment or consider additional factors not provided for in this rule or the Manual. In the case at bar, the Respondent used the NADA guide to compare values of mobile homes determined from the Manual and make adjustments.
42. It was the Petitioner's burden to prove that the assessment of the subject mobile home was incorrect and to prove that the assessment he sought was correct. The Petitioner failed on both provisions.
43. For all the reasons set forth above, there is no change in the assessment of the mobile home.

Summary of Final Determination

Whether subject mobile home was assessed correctly.

44. The Petitioner failed to submit probative evidence that proved the assessment of the mobile home was incorrect and to prove that the value it sought was correct. Accordingly, there is no change in the assessment as a result of this issue.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date first written above.

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.