

REPRESENTATIVE FOR PETITIONER:

Carla D. Bishop, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT:

Dave Simmons, Certified Tax Representative for Madison County

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Keith-MHP, LLC,	)	Petition No.:	48-003-09-1-4-09001
)		
Petitioner,	)	Parcel No.:	18 45-3-1-Z
)		
v.	)	County:	Madison
)		
Madison County Assessor,	)	Township:	Anderson
)		
Respondent.	)	Assessment Year:	2009

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

October 25, 2011

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. Keith-MPH, LLC relied on an appraisal estimating the market value of its mobile home park at \$4,000,000 as of January 1, 2005, and on the appraiser’s testimony that the park was worth the same amount or less as of January 1, 2008—the relevant valuation date for the assessment under appeal. But the appraiser’s testimony was imprecise and somewhat

contradictory regarding what happened in the relevant markets during the intervening period. Also, the appraiser did not convincingly deal with two sales of the park, each of which occurred within a year of one of the valuation dates, and both of which were for significantly more than \$4,000,000. Yet those sales were for \$1,900,000 and \$2,620,000 more than the appraiser's valuation opinion, respectively. Keith-MPH therefore failed to meet its burden of proof, and the Board finds for the Assessor.

Procedural History

2. Keith-MHP appealed the March 1, 2009 assessments for seven parcels that it operated as a single mobile home park. On September 21, 2010, the Madison County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 Notification of Final Assessment Determination for "Main Parcel 18-45-3-1-Z." Keith-MHP then timely filed a Form 131 petition with the Board. On that petition, Keith-MPH listed one parcel—18 45-3-1-Z—in the box designated for identifying the parcel being appealed. *Bd. Ex. A.* In the body of the petition, however, Keith-MPH wrote:

The properties consist of seven parcels: 18 4531Z, 18 4533Z, 18 454AZ, 18 46301Z, 18 464A1Z, 18 464A1Z, 18 464AZ. All seven parcels were appealed to the County PTABOA but a Form 115 was only issued on parcel 18 45-3-1-Z. All parcels are hereby appealed as necessary. The total assessed value should not exceed \$4,000,000 which is supported by a market value in use appraisal.

Id.

3. Based on the fact that Keith-MPH listed only parcel 18-45-3-1-Z on the petition's first page of the petition, the Board sent out a hearing notice for that parcel only. At the hearing, the parties proceeded solely on parcel 18-45-3-1-Z, although Keith-MPH's witnesses, including its appraiser, Richard Correll, referenced the other six parcels' assessments in allocating a portion of Mr. Correll's overall valuation opinion for the park as a whole to 18-45-3-1-Z. The Board therefore treats Keith-MPH's appeal as an appeal of parcel 18-45-3-1-Z only. The Board will refer to the seven parcels as a whole as the "subject property" and to the parcel under appeal as the "appealed parcel."

4. The Board has jurisdiction over Keith-MHP's appeal pursuant to Indiana Code §§ 6-1.1-15 and 6-1.5-4-1. On May 11, 2011, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on Keith-MHP's petition. Neither the Board nor the ALJ inspected the subject property.

Hearing Facts and Other Matters of Record

5. The following people were sworn in:
 - For Keith-MHP: Carla Bishop, certified tax representative
Richard Correll, appraiser
 - For the Assessor: Dave Simmons, certified tax representative
6. Keith-MHP submitted the following exhibits:
 - Petitioner Exhibit 1: Summary Appraisal of the subject property with an effective date of January 1, 2005,
 - Petitioner Exhibit 2: December 28, 2009 letter from Richard Correll and Michael Schlemmer to Carla Bishop,
 - Petitioner Exhibit 3: Form 131 petition.
7. The Assessor did not offer any exhibits.
8. The Board recognizes the following additional items as part of the record of proceedings:
 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet,
 - Board Exhibit D: Mr. Simmons' Power of Attorney for Madison County.
9. The subject property is a mobile home park with 242 lots on 25.47 acres. The subject property's primary commercial land and all of its improvements are assessed to the appealed parcel. The subject property is located at 144 Hollywood Boulevard, Anderson, Indiana.

10. The PTABOA determined the following values for the appealed parcel:
Land: \$187,900 Improvements: \$4,744,800 Total: \$4,932,700¹
11. Keith-MHP requested a total assessment for the appealed parcel of \$3,759,700.

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). 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”). If the taxpayer makes a prima facie case, the burden shifts to the assessor 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. But the burden of proof remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).

Analysis

Parties' Contentions

A. Summary of Keith-MHP's Contentions

13. The appealed parcel is assessed too high in light of an appraisal prepared by Richard Correll of Correll Commercial Real Estate Services.² *Bishop testimony; Pet'r Ex. 1.* Mr. Correll is a 25-year veteran real estate appraiser who specializes in appraising mobile

¹ At hearing, Mr. Simmons gave a different value for the land: \$152,000. The PTABOA determination, however, controls.

² The appraisal report is also signed by Mr. Correll's associate, Michael Schlemmer, an Indiana Certified Trainee Appraiser.

home parks and who has testified in numerous tax appeal hearings in multiple states. *Correll testimony; Pet'r Ex. 1, Addendum.* As Indiana's biggest broker of mobile home parks in the mid-2000s, Mr. Correll has also dealt with investors in those parks. In addition, Mr. Correll wrote a book on self-storage buildings—another type of investment property akin to multi-use and multi-tenant properties. *Id.*

14. In conjunction with an earlier property tax appeal, on September 9, 2008, Mr. Correll prepared a retrospective appraisal report. In that report, Mr. Correll estimated the subject property's market value at \$4,000,000 as of January 1, 2005. *Correll testimony; Pet'r Ex. 1 at 49.* Ideally, Mr. Correll would have prepared a new appraisal for this appeal, but his client was broke and could not afford more documents. Also, the client was fed up with the tax system and did not feel that the benefit would justify the cost. *See Correll testimony.* Mr. Correll therefore used his earlier appraisal report as a starting point to discuss the subject property's market value as of the January 1, 2008 valuation date at issue in this appeal. *Correll testimony.*
15. In the appraisal's analysis, Mr. Correll used three comparable sales of mobile home parks that occurred from 2005-2007. *Correll testimony; Pet'r Ex. 1 at 31-43.* After adjustments, the comparable parks' sale prices ranged from \$16,234 to \$17,524 per pad, indicating a range in value for the subject property of \$3,928,597 to \$4,240,847. *Id.* Mr. Correll reconciled that range to a value of \$4,000,000 as January 1, 2005. *Id.*
16. For his income approach, Mr. Correll reviewed income statements for the subject property, which showed that the property had an occupancy rate of 98% in 2008 and that it operated on a consistently high level between 2005 and 2008. *Correll testimony.* Based on those income statements, Mr. Correll projected stabilized net operating income of \$469,864. *Pet'r Ex. 1 at 46.* He then extracted an overall capitalization rate of 8.5% based on sales and listing data for nine mobile home parks from Indiana, Michigan, and Ohio. *Pet'r Ex. 1 at 47.* Mr. Correll loaded that overall rate by 3.13% to account for property taxes, yielding a capitalization rate of 11.63%. *Id. at 48.* When he divided the

property's net operating income by that loaded capitalization rate, he got a total of \$4,041,273, which he rounded to a value of \$4,000,000 as of January 1, 2005. *Id.*

17. In Mr. Correll's view, the subject property would have been worth the same or less on January 1, 2008 than it was worth on the appraisal's effective date three years earlier. *Correll testimony.* The sales from 2005-2007 that Mr. Correll used in his appraisal would give a good indication of the subject property's value on January 1, 2008. *Id.* Actually, the value might be lower, because by 2008, things were getting "a little dicey in the national markets." *Id.* From the middle of 2008 going forward, several factors conspired to make things "stormy": the credit collapse, economic problems, the housing crisis, rising expenses, and credit quality problems with tenants related to job situations throughout the state. *Id.* Financing dried up for manufactured home communities. *Id.* Nonetheless, Mr. Correll felt that he was being fair to say that it was "still . . . sunshine in the sky for the most part" on January 1, 2008. *Id.*
18. Similarly, Mr. Correll inspected the property and interviewed management in 2008, even though he was valuing the property retrospectively as of 2005. The property had one of the highest occupancy rates in the region during that intervening period, and its income stream remained steady, with rent increasing by roughly 2% per year. *Id.; Pet'r Ex. 1 at 45.* But those rent increases hardly offset the property's increased expenses, even if one leaves aside significant increases in subject property's taxes, which went from about \$50,000 to almost \$200,000. *Correll testimony; see also Pet'r Ex. 1 at cover letter.*
19. Based on the stability of income and expenses, Mr. Correll would use the same net operating income in 2008 that he used in 2005. *See id.* If Mr. Correll were to use the same 8.5% overall rate that he used in his appraisal and load it for the 2008 valuation date, the result would be the same or lower. *Id.* Mr. Correll, however, testified that 8.5% is an aggressive rate, and the value might have been lower due to the crisis that was coming in 2008. *See Correll testimony.* Without further data or an exact appraisal as of January 1, 2008, however, Mr. Correll's opinion is that the property was worth \$4,000,000 in 2008. *Id.*

20. Mr. Correll does not know how the subject property is doing today. But he has been looking at mobile home park foreclosures for two years. *Correll testimony*. His company shuttered its brokerage practice in those properties in 2008. *Id.* And the industry has been collapsing since the housing crisis began. The housing bubble basically took every shred of credit-worthy people out of the lowest tiers of housing and into single-family housing, leaving nobody to backfill the space. *Id.* In any event, the period between 2005 and January 1, 2008, was a stable period of high occupancy, stable rents, quality management, and managed expenses. From an investor's perspective, the only thing that throttled the investment was the dramatic tax increase. *Correll testimony*.
21. Mr. Correll acknowledged that Keith-MHP bought the subject property for \$6,620,000 in April 2007. *See Correll testimony; Pet'r Ex. 1 at cover letter*. But the commercial real estate market was at its peak then; capital flows were strong and demand was high. *Correll testimony*. So Keith-MHP paid a big number. *Id.* And the subject property was well-known and had a long, stable history. *Id.* Also, the subject property's taxes increased by about \$150,000 after the sale, effectively decreasing the property's net income by the same amount. *Id.* At an 8.5% capitalization rate, that \$150,000 decrease in net income represents a loss of \$1,800,000 to the bottom line. *Id.* The property almost went up for tax sale. *Id.*
22. Although the Assessor sought to downplay the tax increase by claiming that an astute investor would anticipate that the property's assessment would increase to more closely match its sale price, an out-of-state investor like Keith-MPH may not have anticipated that increase. *Correll testimony*. Investors have to make assumptions about a variety of things, such as expenses, management, and the condition of infrastructures within a mobile home park. *Id.* And investors in large mobile home parks often are not as sharp as one might think concerning what is going to happen with local property taxes. *Id.* Although there was a lot of discussion about market value during the time period at issue, not much had happened in the earlier years after Indiana had gone to a market-value-

based system. So, while investors thought that taxes might increase a little, they did not anticipate the dramatic increase. *Id.*

23. In fact, in the mid-2000s, increases in mobile home park assessments and taxes sparked massive changes in income streams and in commercial financing for those parks. *Correll testimony.* Mobile home parks that were once recognized as major investments were no longer as profitable due to high taxes. And that was unexpected. *Id.*
24. Finally, because Mr. Correll appraised the property as a whole, Keith-MPH contends that the Board must allocate part of Mr. Correll's \$4,000,000 to the appealed parcel. *See Bishop testimony.* Mr. Correll had no problem with the land assessments for the other six parcels. *See Pet'r Ex. 2.* Ms. Bishop therefore subtracted those assessments from Mr. Correll's valuation estimate to arrive at a value of \$3,759,700 for the appealed parcel. *Bishop testimony.*

B. Summary of the Assessor's Contentions

25. In cross-examining Mr. Correll, the Assessor highlighted the fact that one of the comparable sales in Mr. Correll's appraisal had an occupancy rate of only 63%. Yet Mr. Correll only adjusted its sale price by 10%. *Correll testimony; Pet'r Ex. 1 at 42.* In a similar vein, although the subject property was 98% occupied, Mr. Correll used 90% occupancy in his analysis. *Id.* Also, Mr. Correll loaded his capitalization rate by 3.13% for real estate taxes, which does not account for the current 2% "cap" on taxes. *See Correll testimony; Simmons testimony.* All other things being equal, lowering the tax rate would have the effect of increasing Mr. Correll's value estimate. *See Correll testimony.*
26. The Assessor's witness, Mr. Simmons, disagreed with Mr. Correll's claim that owners and potential investors of mobile home parks were blindsided by increases in their parks' assessments. According to Mr. Simmons, an astute buyer would have known that Indiana had gone to a market-value system and therefore would have foreseen the likelihood that

the subject property's assessment would increase in correspondence with its sale price.
Simmons testimony.

27. Finally, the subject property sold three times, the last two times for prices that far exceed Mr. Correll's valuation opinion. The property sold for \$3,600,000 in 1997, for \$5,900,000 in 2004, and for \$6,600,000 in 2007. *Simmons testimony.* That last sale supports the property's 2009 assessment. *Simmons argument.*

Discussion

28. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines as "the market value 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 a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
29. A property's market value, 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 Ct. 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. *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.

30. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *See 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, the evidence lacks probative value. *Id.* For March 1, 2009 assessments, that valuation date was January 1, 2008. 50 IAC 21-3-3(2009).
31. Here, Keith-MHP offered Mr. Correll's appraisal in which he estimated the subject property's value as a whole at \$4,000,000. Mr. Correll certified that he prepared his appraisal in conformity with USPAP, and he used two generally accepted methodologies—the sales-comparison and income approaches to value. Thus, Keith-MPH made a prima facie showing that the subject property as a whole was worth no more than \$4,000,000 as of the appraisal's effective date.
32. Of course, as Keith-MPH recognized, that appraisal's effective date was January 1, 2005—exactly three years before the valuation date at issue in this appeal. Mr. Correll offered two main reasons why he believed that the subject property's value had not increased between January 1, 2005, and January 1, 2008. First, he testified that the sales he used in his sales-comparison approach were recent enough, without making time adjustments, to make an assumption about the subject property's 2008 market value-in-use. Second, he testified that his conclusions under the income approach would not have changed between 2005 and 2008, because the property had similar income streams and otherwise operated consistently between those years. Thus, in Mr. Correll's opinion, the span between 2005 and 2008 was a stable period of high occupancy, stable rents, and managed expenses, with the only notable change being a steep tax increase.
33. Some of Mr. Correll's testimony, however, painted a different picture. For example, he testified that in the mid 2000s, the availability of credit led people who previously might have lived in mobile homes to buy single-family housing. And he referred to the market peaking in mid 2007, which would cut against the notion that values changed little between January 1, 2005, and January 1, 2008. Perhaps Mr. Correll meant to describe a

scenario where the market rose, peaked, and then finally declined to a point equal to or below its January 1, 2005 level. If so, his lack of specificity about the relative degree and dates of those changes and his failure to point to any concrete data to support his general claims, makes it difficult to place much confidence in his opinion.

34. Thus, while Mr. Correll's testimony arguably suffices to make a prima facie case for relating his January 1, 2005 valuation opinion to the subject property's market value-in-use as of the January 1, 2008 valuation date at issue in this appeal, it is not very persuasive. And the Assessor impeached Mr. Correll's opinion with Mr. Simmons' testimony about the subject property's sales history.
35. Mr. Simmons testified that the subject property sold three times since 1997; most significantly, it sold for \$5,900,000 in 2004, and again for \$6,600,000 in April 2007. Granted, Mr. Simmons did not offer any information about those sales other than the years that they occurred and the sale prices. He may not even have been precise in relating the sale prices—Mr. Correll reported the 2007 price as \$6,620,000 instead of the \$6,600,000 to which Mr. Simmons testified. Thus, the Board would hesitate to rely on those sales as conclusively demonstrating the subject property's market value-in-use. Nonetheless, they are enough to impeach Mr. Correll's already shaky testimony.
36. Mr. Correll gave two reasons why he believed that the 2007 sale price did not accurately reflect the subject property's market value: (1) the property was well-known and had a long, stable history, and (2) the property's real estate taxes increased by approximately \$150,000 after the 2007 sale. As to his first point, Mr. Correll appears to have been hinting that the sale included non-real-estate interests, such as going-concern value or goodwill. But Mr. Correll's statement does not come close to establishing that the sale price included amounts attributable to non-real-estate interests, much less that the consideration for those interests represented a significant portion of the sale price.
37. Mr. Correll's second point has a little more merit. If one assumes an 8.5% overall rate similar to what Mr. Correll used in his appraisal, the \$150,000 tax increase would have

reduced what an informed investor would have been willing to pay for the property by approximately \$1,800,000. Of course, that still would have made the subject property worth \$4,820,000, or \$820,000 more than Mr. Correll's valuation opinion. And by 2008, the Indiana General Assembly enacted credits, commonly referred to as "tax caps," that generally limit a non-homestead residential property's tax liability to 2.5% of its assessed value for taxes first due and payable in 2009 and to 2% of its assessed value for taxes first due and payable after 2009. I.C. §§ 6-1.1-20.6-7 and -7.5³; *see also* I.C. § 6-1.1-20.6-4(3)(defining "residential property" to include "[l]and rented or leased for the placement of a manufactured home or mobile home, including any common areas shared by the manufactured homes or mobile homes."). Those tax caps likely would have at least partially soothed investors' concerns about property taxes going forward.

38. Unlike the subject property's April 2007 sale, however, Mr. Correll failed to deal with the 2004 sale price either in his testimony or in his original appraisal, even though that sale occurred within a year of the appraisal's valuation date. Yet Mr. Correll relied on sales of other parks from 2006 and 2007—both of which were further removed from the valuation date than was the 2004 sale—to estimate a value for the subject property that was \$1,900,000 less than the park's sale price. Under those circumstances, Mr. Correll's failure to even mention the 2004 sale detracts at least somewhat from the reliability of his valuation opinion.
39. In conclusion, Mr. Correll's original valuation opinion ignored an apparently timely sale of the subject property to reach a value conclusion that is \$1,900,000 less than the sale price. He then attempted to trend that valuation opinion forward three years, spanning a period in which the commercial real estate market apparently peaked within eight months

³ Property taxes imposed after being approved by voters in a referendum and property taxes in eligible counties used to pay debt service or to make lease payments for bonds or leases entered into before July 1, 2008 are not included in the caps. I.C. § 6-1.1-20.6-7(b) and (c); I.C. § 6-1.1-20.6-7(b) and (c). An "eligible county" is "a county for which the general assembly determines in 2008 that limits to property tax liability under this chapter are expected to reduce in 2010 the aggregate property tax revenue that would otherwise be collected by all units of local government and school corporations in the county by at least twenty percent (20%)." I.C. § 6-1.1-20.6-7(c); I.C. § 6-1.1-20.6-7(c).

or so of the new valuation date, and at which peak the subject property again sold for \$2,620,000⁴ more than the Mr. Correll's earlier valuation opinion. Notwithstanding those facts, Mr. Correll concluded that the subject property was worth the same as, or possibly less than, his original valuation opinion. Without significantly more explanation from Mr. Correll and some indication of the data upon which he based his conclusions, Mr. Correll's opinion of the subject property's market value as of January 1, 2008, lacks probative value.⁵

SUMMARY OF FINAL DETERMINATION

40. Keith-MPH failed to meet its burden of proof. The Board therefore finds for the Assessor.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁴ That is based on the \$6,620,000 sale price that Mr. Correll reported, not the \$6,600,000 that Mr. Simmons testified to.

⁵ Because the Board finds that Mr. Correll's opinion of the subject property's value as a whole is not probative, it need not address Ms. Bishop's proposed allocation of a portion of that value to the appealed parcel.

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>>.