

REPRESENTATIVE FOR PETITIONER:

Linda Fahlsing, Taxpayer
Dennis Fahlsing, Taxpayer

REPRESENTATIVES FOR RESPONDENT:

Kim Miller, Noble County Assessor
Delbert Linn, PTABOA President
Mary Beth Lemings, PTABOA Member

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

DENNIS & LINDA FAHLSING,)	
)	
Petitioners,)	Petition for Review of Assessment, Form 131
)	
v.)	Petition No. 57-021-03-1-6-00001
)	County: Noble
)	
SWAN TOWNSHIP ASSESSOR,)	Township: Swan
)	
Respondent.)	Parcel No. 2140002500 (Annually Assessed Mobile Home)
)	
)	Assessment Year: 2003

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

February 11, 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 the annually assessed manufactured home was correctly valued for the 2003 assessment year.*¹

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, Dennis and Linda Fahlsing (Petitioners) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on August 4, 2003. The Notification of Final Assessment Determination of the Noble County Property Tax Assessment Board of Appeals (PTABOA) was mailed on July 17, 2003.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was conducted on October 22, 2003, in Albion, Indiana before Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

¹ According to 50 IAC 3.2, for the purpose of this article, mobile home includes a manufactured home, and can be used synonymously.

4. The following persons were present at the hearing:

For the Petitioner:

Linda Fahlsing, taxpayer
Dennis Fahlsing, taxpayer
James Arington, observer
Dan Harm, observer

For the Respondent:

Kim Miller, Noble County Assessor
Delbert Linn, PTABOA President
Mary Beth Lemings, PTABOA Member

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

For the Petitioner:

Linda Fahlsing
Dennis Fahlsing

For the Respondent:

Kim Miller
Delbert Linn
Mary Beth Lemings

6. The following exhibits were presented:

For the Petitioner:

Petitioner's Exhibit 1 – A purchase agreement between Skips Factory Built Homes (Skips) and Linda & Dennis Fahlsing for a 1991 Commodore, dated August 29, 2003

Petitioner's Exhibit 2 – A bill of sale between Chase Manhattan Mortgage Corporation (Chase) and Linda & Dennis Fahlsing for a 1994 Fleetwood, dated December 27, 2001

For the Respondent:

No exhibits were submitted

7. The following additional items are officially recognized as part of the record of proceedings:

Board's Exhibit 1 – Form 131 petition with the following attachments:

- a) A copy of the PTABOA minutes for the Fahlsing's appeal, dated July 15, 2003
- b) A copy of the definition of an arm's length transaction
- c) A copy of the Form 115, Notification of Final Assessment Determination, dated July 17, 2003
- d) Form 130 petition to the PTABOA with attachments: an explanation of error filed by the Petitioners; a copy of the bill of sale between Chase and the Petitioners, dated December 27, 2001; a statement of appraised value manufactured housing from James E. Scott, dated May 13, 2003; a copy of the Notice of Assessment of Mobile Home (Form 2), dated January 15, 2003; and a copy of the valuation record card on subject manufactured home

Board's Exhibit 2 – Notice of Hearing on Petition

8. The parties to the appeal agreed to waive the discovery provisions listed in IC § 6-1.1-15-4, which requires them to file statements of testimonial evidence and lists of witnesses and exhibits prior to the Board's hearing.
9. The annually assessed manufactured home is located at 0554 South 1100 East, Avilla, Swan Township, Noble County.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. The assessed value under appeal for the year 2003, as listed on the Form 131 is:
Annually Assessed Mobile Home: \$18,000.

Jurisdictional Framework

12. 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.
13. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Property Tax System

14. The Indiana Constitution requires Indiana to create a uniform, equal and just system of assessment. *See* Ind. Const. Article 10, § 1.
15. 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).
16. 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)).
17. 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

18. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
19. 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 Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
20. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenbom-Nofzinger v. State Board of Tax Commissioners*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
21. 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 Board of Tax Commissioners*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

22. 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 Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. Department of Local Government Finance (DLGF)*, 765 N.E. 2d 711 (Ind. Tax 2002).
23. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner 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 Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 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

ISSUE: Whether the annually assessed manufactured home was correctly valued for the 2003 assessment year

24. The Petitioner contends the manufactured home should be assessed at \$8,500, the price that the Petitioner paid for it on December 27, 2001.

25. The Respondent contends the manufactured home is correctly assessed at the appraised value of \$18,000.

26. 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)

Provides the guidelines for establishing the valuation of real property mobile and manufactured 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 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 3.2-2-2 “Annually Assessed Mobile Home” defined:

An “annually assessed mobile home” is 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 3.2-4-1 Criteria for valuation of annually assessed mobile homes

(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 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.

(d) If the county 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.

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

The memorandum answered questions that were being asked of the DLGF regarding annually assessed mobile homes. It also referred to 50 IAC 3.2, the DLGF rule on the assessment of mobile homes. In part it stated that township assessors are to use the 2002 Real Property Manual and Guidelines in the assessment of annually assessed mobile homes. It further instructed assessors 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.

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

The true tax value of any property in Indiana, including annually assessed mobile homes, is to be equal to its market value-in-use as defined in the 2002 Real Property Manual. Therefore, if there exists a better indication of true tax value than that produced by the schedules in the 2002 Real Property Assessment Guidelines that were used by the assessor, the assessor can adjust the value. The DLGF further states that the memorandum is not intended as a global authorization to use the NADA guide in lieu of the cost and depreciation tables contained in 50 IAC 3.2. The NADA guide is not a mass appraisal method. However, it is allowable to use the NADA guide to adjust the value of an **individual** mobile home upon appeal if the assessor found that the guide provided better evidence of value than 50 IAC 3.2.

Ind. Code § 6-1.1-31-6 (c) and § 6-1.1-31-7 (d)

“True tax value does not mean fair market value”. True tax value is defined 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, less that portion of use value representing subsistence housing for its owner.

50 IAC 3.2 “Market Value” defined:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer

and seller each acting prudently and knowledgeable, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangement comparable thereto;
- The price is unaffected by special financing or concessions.

50 IAC 2.3, Book 1, Appendix C – Residential and Agricultural Cost Schedules – Mobile And Manufactured Homes

Mobile home Cost Schedules

27. Evidence and testimony considered particularly relevant to this determination includes the following:
- a. The subject property is an annually assessed 1994 Fleetwood, 28 foot x 56-foot manufactured home.
 - b. As a result of the PTABOA hearing conducted on July 15, 2003, the PTABOA accepted from the Petitioners a Statement Of Appraised Value Manufactured Housing prepared by James E. Scott, Certified Appraiser, dated May 13, 2003. Based on this appraisal the PTABOA reduced the true tax value of the 1994 Fleetwood for the 2003 assessment year to \$18,000. *Board Exhibit 1 and Miller testimony.*
 - c. The 1994 Fleetwood was purchased as a result of a bankruptcy from Chase on December 27, 2001 for \$8,500. Petitioner contends that this was an arm's length transaction and therefore the \$8,500 reflects the true market value of the home at the time of the purchase. *Petitioner's Exhibits 2, Board's Exhibit 1(b) & Fahlsing testimony.*
 - d. Petitioner contends the purchase of the 1994 Fleetwood manufactured home from Chase would be considered an arm's length transaction according to the definition found in *Black's Law Dictionary*, as the transaction was negotiated by unrelated parties each acting in their own self-interest. *Board's Exhibit 1(b) & Fahlsing testimony.*

- e. A comparable 1991 Redmon, 26 foot x 54-foot manufactured home was purchased on August 29, 2003 for \$5,000. *Petitioner's Exhibit 1 & Fahlsing testimony.*
- f. Chase originally had the 1994 Fleetwood manufactured home listed for sale at \$30,000, however since the property was part of a bankruptcy Chase sold the subject property to the Petitioners for \$8,500. The PTABOA did not accept the Petitioners' purchase price of \$8,500 as an arm's length transaction sale or the market value-in-use of the property. *Miller testimony.*

Analysis of Issue

- 28. The manufactured home under review is a 1994 Fleetwood model, 26 feet x 54-feet, with air conditioning and skirting.
- 29. The Petitioners testified that the 1994 Fleetwood manufactured home was purchased from Chase through a bankruptcy on December 27, 2001 for \$8,500. The Petitioners contend this was an arm's length transaction as defined in *Black's Law Dictionary* as the transaction was negotiated by unrelated parties each acting in their own self interest. The Petitioner's opined that the \$8,500 reflects the true market value of the home at the time of the purchase. *Board's Exhibit 1 & Petitioner's Exhibit 2*
- 30. The Respondent testified that the PTABOA accepted the Petitioners' evidence of the Statement of Appraised Value Manufactured Housing prepared by James E. Scott, Certified Appraiser, dated May 13, 2003 (*see Board's Exhibit 1*) and reduced the true tax value of the 1994 Fleetwood to \$18,000. However, the PTABOA denied the Petitioners' request to reduce the 1994 Fleetwood to the purchase price of \$8,500 (*see Petitioner's Exhibit 2*) as the PTABOA did not feel the purchase price was a result of an arm's length transaction. The PTABOA felt that the transaction was not in the ordinary course of business by parties with independent interest.

31. The criteria for the valuation of annually assessed manufactured homes is set forth in 50 IAC 3.2-4-1. However, the DLGF in a memorandum dated July 2003 in part, defined the true tax value of any property in Indiana, including annually assessed mobile homes is to be equal to its market value-in-use.
32. Market Value is defined as “the most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeable, and assuming the price is not affected by undue stimulus.” 50 IAC 3.2.
33. 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.
34. The transaction between the Petitioners and Chase on the manufactured home was a sale affected by an undue stimulus and duress due to a bankruptcy. In addition, a mortgage company would not be in the ordinary business of buying and selling manufactured homes. The purchase of the subject property from a mortgage company may be a typical sale that, at best, should have been researched and adjusted, or should have been discarded.
35. Finally, the Petitioners attempted to argue for a change in the true tax value based on one (1) comparable, that of a 1991 Redmon, 26 foot x 54-foot manufactured home purchased for \$5,000 on August 29, 2003.

36. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in assessment. However, the Petitioners did not identify properties that are similar situated to the property under appeal, as the comparable property submitted varied in year of construction, size and model. The Petitioners' testimony that the comparable is "superior" to the subject is considered mere speculation and conclusory. Unsubstantiated conclusions do not constitute probative evidence. *Whitley*, 704 N.E. 2d at 1119. Therefore, the Petitioners did not establish disparate tax treatment between the subject and other similarly situated properties. When a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
37. For all reasons set forth above, the Petitioners failed to meet their burden regarding this issue. No change is made in the assessment as a result.

Summary of Final Determination

Determination of Issue: *Whether the annually assessed manufactured home was correctly valued for the 2003 assessment year*

38. The Petitioners failed to meet their burden to that the assessment of the manufactured home was incorrect. No change in the assessment is made as a result.

The Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review 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.