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

Petition #:	**31-013-05-1-6-00001; 31-013-05-1-6-00002; 31-013-05-1-6-00003; 31-013-05-1-6-00004; 31-013-05-1-6-00005; 31-013-05-1-6-00006; 31-013-05-1-6-00007**
Petitioners:	**RW Properties LLC**
Respondent:	**Harrison Township Assessor (Harrison County)**
Parcel #'s:	**4040065100; 4040064600; 4040063100; 4040066000; 4040064100; 4040064800; 4040065800**
Assessment Year:	**2005**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Harrison County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 18, 2005.

2. Notice of the PTABOA's decision was mailed on July 15, 2005.

3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 15, 2005.

4. The Board issued a notice of hearing to the parties dated October 28, 2005.

5. The Board held an administrative hearing on December 13, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.

6. Persons present and sworn in at hearing:

   a) For Petitioner: Robert Walker, Co-owner, RW Properties, LLC
      Roger Walker, Co-owner, RW Properties, LLC

   b) For Respondent: Paul Saulman, Harrison County Assessor
      Gerald Saulman, Harrison Township Assessor
      Clyde Windell, Harrison County PTABOA
      Paul Reas, Harrison County PTABOA

Facts

7. The subject properties are classified as a personal property mobile homes located at Seven Oaks Mobile Home Park, Corydon, Harrison Township, Harrison County, as is shown on the property record cards for parcels 4040065100, 4040064600, 4040063100, 4040066000, 4040064100, 4040064800, and 4040065800.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed value of subject properties as determined by the Harrison County PTABOA:

Pet. No. 00001	$27,100
Pet. No. 00002	$18,200
Pet. No. 00003	$26,700
Pet. No. 00004	$17,300
Pet. No. 00005	$28,300
Pet. No. 00006	$20,000
Pet. No. 00007	$24,800

10. Assessed Value requested by Petitioner on the Form 131 petitions:

Pet. No. 00001	$11,469
Pet. No. 00002	$ 7,800
Pet. No. 00003	$12,000
Pet. No. 00004	$ 6,500
Pet. No. 00005	$14,900
Pet. No. 00006	$ 8,500
Pet. No. 00007	$11,326

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

a) Tax assessments in Indiana are to be based on market value for both real estate and personal property. *Robert Walker argument.* Valuations therefore should be tied to the market value of the property. *Id.* Market value in its purest form is the amount, in cash, for which a buyer is willing to pay and seller is willing to sell. *Id.*

b) House Bill 1120, effective January 2006, states that personal property mobile homes are to be assessed at the lower of: the amount paid for the mobile home, the NADA APPRAISAL GUIDE FOR MANUFACTURED HOUSING (NADA Guide), or comparable market sales. *Id; Pet'r Ex. 2.* Thus, the legislature must have recognized that the values for mobile homes under the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) were overstated, and that new rules were needed. *Id.*

c) The NADA Guide is a frequently used tool for determining the market value for mobile homes and cars. *Id.* It is an independent valuation. *Id.*

d) The Petitioner submitted an individual NADA Guide Book Value Form setting forth what appears to be the Petitioner's valuation calculations for each mobile home in question. *Id; Pet'r Ex. 3(Pet Nos. 00001,*[1] *00003, 00005, 00007); Pet'r Ex. 4 (00002, 00004, 00006).*

e) All of the mobile homes in question had been repossessed. Kentucky Land Company buys repossessed mobile homes, and resells them to the Petitioner. *Robert Walker testimony.*

f) Petition No. 00001 – Parcel 4040065100
- This is a 16-foot by 80-foot mobile home manufactured in 1996. *Pet'r Ex. 2.* The Petitioner purchased the home for $11,469. *Id.* This figure should be the true value of the home, as there was a willing seller and buyer. *Robert Walker argument and testimony*
- The Petitioner valued the mobile home at $12,313 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 3.*

g) Petition No. 00002 – Parcel 4040064600
- This is a 14-foot by 70-foot mobile home that was repossessed by Green Point Credit. *Pet'r Ex. 2.* The Petitioner purchased the home from Green Point Credit for $7,800 in a sealed bid auction on February 18, 2004. *Id.*
- The Petitioner valued the mobile at $7,359 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 4.*

h) Petition No. 00003 – Parcel 4040063100
- The Petitioner bought this mobile home from Green Point Credit for $12,000 in a sealed bid auction on March 2002. *Pet'r Ex. 2.*
- The Petitioner valued the mobile home at $14,052 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 3.*

i) Petition No. 00004 – Parcel 4040066000
- This is a 16-foot by 64-foot Flemming mobile home manufactured in 1998. *Pet'r Ex. 2.* The Petitioner bought the mobile home for $6,500 from Kentucky Land Company in Irvington Kentucky in October 2004. The sale was not made pursuant to a sealed bid auction. *Id.*
- The Petitioner valued the mobile home at $9,254 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 4.*

j) Petition No. 00005 – Parcel 4040064100
- This property is a 16-foot by 80-foot Fleetwood mobile home manufactured in 1999. *Pet'r Ex. 2.* The Petitioner bought the mobile home for $14,900

[1] For convenience, the Board will refer to the Form 131 petitions by the last five digits in the petition numbers.

from Kentucky Land Company in Irvington, Kentucky. The sale was not made pursuant to a sealed bid auction. *Id.*

- The Petitioner valued the mobile home at $18,424 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 3.*

k) Petition No. 00006 – Parcel 4040064800

- This is a 14-foot by 68-foot mobile home manufactured in 1989. *Pet'r Ex. 2.* The Petitioner bought the mobile home for $8,500 from Kentucky Land Company in Irvington, Kentucky in October 2004. The sale was not made pursuant to a sealed bid auction. *Id.*
- The Petitioner valued the mobile home at $12,124 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 4.*

l) Petition No. 00007 – Parcel 4040065800

- This is a 14-foot by 66-foot mobile home. *Pet'r Ex. 2.* The Petitioner bought the mobile home for $11,326 from Kentucky Land Company in Irvington, Kentucky. The sale was not made pursuant to a sealed bid. *Id.*
- The Petitioner valued the mobile home at $11,386 using the NADA Guide yellow chart and Book Value Form. *Pet'r Ex. 3.*

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

a) The Respondent does not value the personal property mobile homes from the NADA book. *P. & G. Saulman testimony.* The Department of Local Government Finance instructed the Respondent to use the Guidelines to assess real property mobile homes. *Id.* The Respondent has not seen the 2006 law. *Id.*

b) The Petitioner submitted different NADA values at the PTABOA hearing. *Id.*

Record

13. The official record for this matter is made up of the following:

a) The Petition,

b) The CD recording of the hearing labeled BTR 6178,

c) Exhibits:

31-013-05-1-6-00001

Petitioner Exhibit 1: Letter dated August 10, 2005 to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Bill of Sale,
Petitioner Exhibit 3: Calculation of value using the Fall 2005 NADA book values,

Petitioner Exhibit 4: Copy of Form 131 petition.

31-013-05-1-6-00002

Petitioner Exhibit 1: Letter dated August 10, 2005, to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Purchase Agreement,
Petitioner Exhibit 3: Copy of Check,
Petitioner Exhibit 4: Calculation of value using the Fall 2005 NADA book values,
Petitioner Exhibit 5: Copy of Form 131 petition.

31-013-05-1-6-00003

Petitioner Exhibit 1: Letter dated August 10, 2005, to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Purchase Agreement,
Petitioner Exhibit 3: Calculation of Value using the Fall 2005 NADA book values,
Petitioner Exhibit 4: Copy of Form 131 petition.

31-013-05-1-6-00004

Petitioner Exhibit 1: Letter dated August 10, 2005, to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Bill of Sale,
Petitioner Exhibit 3: Copy of cancelled check,
Petitioner Exhibit 4: Calculation of Value using the Fall 2005 NADA book values,
Petitioner Exhibit 5: Copy of Form 131 petition.

31-013-05-1-6-00005

Petitioner Exhibit 1: Letter dated August 10, 2005, to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Bill of Sale,
Petitioner Exhibit 3: Calculation of Value using the Fall 2005 NADA book values,
Petitioner Exhibit 4: Copy of Form 131 petition.

31-013-05-1-6-00006

Petitioner Exhibit 1: Letter dated August 10, 2005, to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Bill of Sale,
Petitioner Exhibit 3: Copy of cancelled check,

Petitioner Exhibit 4: Calculation of Value using the Fall 2005 NADA book values,
Petitioner Exhibit 5: Copy of Form 131 petition.

31-013-05-1-6-00007

Petitioner Exhibit 1: Letter dated August 10, 2005, to the Indiana Board of Tax Review,
Petitioner Exhibit 2: Copy of Bill of Sale,
Petitioner Exhibit 3: Calculation of Value using the Fall 2005 NADA book values,
Petitioner Exhibit 4: Copy of Form 131 petition.

Board Exhibits (for each petitions)

Board Exhibit A: Form 131 petition
Board Exhibit B: Letter to ALJ outlining Petitioner's position
Board Exhibit C: Copy of House Bill 1120, Section 15
Board Exhibit D: Copy of hearing notice
Board Exhibit E: Copy of 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 a local assessing official has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would 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).

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 Twp. Assessor*, 802 N.E.2d 276 (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 establish a prima facie case of error with regard to the assessments of the mobile homes at issue in the petitions ending 00001, 00002, 00003, 00005, and 00007. The Board reaches this conclusion for the following reasons.

a) The Petitioner contends that the mobile homes are assessed in excess of their market values as demonstrated by the sale prices for the mobile homes as well as by their values under the NADA Guide.

b) The parties do not dispute that the mobile homes in question are personal property and that they meet the definition of "annually assessed mobile homes" as set forth in Ind. Admin. Code, tit. 50, r. 3.2. The parties also do not appear to dispute that the mobile homes in question were assessed using the portions of the Guidelines applicable to the assessment of real property mobile homes. *See* 50 IAC 3.2-4-1(b)-(c) (requiring township assessors to value annually assessed mobile homes in accordance with the Guidelines if the county assessor has selected the Guidelines as its criteria for assessing real property mobile homes).

c) The primary question, therefore, is whether the Petitioner can rely upon evidence of the sale prices and NADA Guide values of the subject mobile homes to establish an error in assessment.

d) Generally, a property's market value-in-use, as ascertained through application of the Guidelines' cost approach, 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*, 2006 Ind. Tax LEXIS 4 (Ind. Tax 2006). A taxpayer, however, may use an appraisal prepared in accordance with the Manual's definition of true tax value to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Nonetheless, a taxpayer may rebut that presumption by offering evidence relevant to the market value-in-use of the property. MANUAL at 5. Such evidence includes sales information regarding the subject or comparable properties as well as other information compiled in accordance with generally accepted appraisal principles. *Id.*

e) In addition, in a memorandum to assessing officials dated July, 2003, the DLGF issued the following interpretative guidance:

> *Question: After receiving notice of the assessment, the owner of an annually assessed mobile home contacts the township assessor stating that the true tax value is too high when compared to a nationally recognized pricing guide such as the NADA guide for manufactured housing. Should the assessor revise the value based on this type of evidence?*

> Answer: The true tax value of any property in Indiana, including 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. However, the national value guides are based on "averages" and do not necessarily represent the value of any individual mobile home . . . . The use of the NADA Guide requires the assessor to apply the methodology outlined in the Guide properly in making an estimate of value. The Department also stresses that the use of the value shown on the NADA website does not take all factors affecting value into consideration and therefore is not good evidence of market value. . . . Therefore, the assessor must fully understand the use of the NADA Guide, and use it properly if accurate values are to result.

Annually Assessed Mobile Homes (Department of Local Government Finance, July 2003).

f) Based on the foregoing, a taxpayer may rely on extrinsic evidence of market value to dispute the assessment of an annually assessed mobile home. Such evidence may include the purchase price of the subject mobile home as well as other evidence of value. While use of a nationally recognized value guide, such as the NADA Guide, may provide an indication of a given mobile home's market value-in-use, the proponent of such evidence must demonstrate that he or she properly applied that guide in arriving at a requested value. With this in mind, the Board now turns to the evidence presented by the Petitioner.

g) The Petitioner submitted a Book Value Form for each of the subject mobile homes. The form was completed in ink, apparently by the Petitioner. *Pet'r Ex. 3 (Pet. Nos. 00001, 00003, 00005, 0000); Pet'r Ex. 4 (Pet. Nos. 00002, 00004, 00006).* The form calls for factual information concerning the mobile home and requires the person completing the form to provide the "yellow chart" value of the home. *Id.* The form also calls for various adjustments to be made to the "yellow chart" value. Those adjustments include a "condition" adjustment and a "community adjustment." *Id.* The Petitioner did not submit the "yellow chart" or any other portion of the NADA Guide as evidence.

h) The Petitioner's witnesses did not explain the methodology behind the NADA Guide valuations nor did they provide any evidence from which the Board could infer that they properly applied such methodology in completing the Book Valuation Form for each mobile home. Consequently, the Petitioner's Book Form valuations for the subject mobile homes lack probative value.

i) The Petitioner, however, also presented evidence regarding the amount for which it purchased each of the subject mobile homes. *See Pet'r Ex 2.* The sale of a property often is the best evidence of that property's market value. This general rule, however, presupposes that the circumstances surrounding the sale are indicative of a market value transaction.

j) The 2002 Real Property Assessment Manual ("Manual") provides the following definition of "market value":

> 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 knowledgably, 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:
>
> i. The buyer and seller are typically motivated;
> ii. Both parties are well informed and advised and act in what they consider their best interests;
> iii. A reasonable time is allowed for exposure in the open market;
> iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
> v. The price is unaffected by special financing or concessions.

2002 REAL PROPERTY ASSESSMENT MANUAL 10 (incorporated by reference at Ind. Admin. Code tit. 50, r. 2.3-1-2).

k) The Petitioner purchased the mobile homes referenced in Petition Nos. 00002 and 00003 from GreenPoint Credit, which had repossessed the homes. The Petitioner bought both mobile homes pursuant to a "sealed bid." On their face, these facts place in doubt whether several prerequisites to a market value sale were present. It is likely that GreenPoint Credit was not a typically motivated seller and the fact that the sale was made pursuant to a sealed bid casts doubt upon whether the mobile homes were exposed to the market for a reasonable period of time. The Petitioner did not present any evidence to allay those concerns. Consequently, the sale prices for those two mobile homes lack probative value.

l) The Petitioner's purchase of the mobile homes referenced in Petition Nos. 00001, 00005, and 00007 also involve circumstances that render the sale prices devoid of probative value in this case. Those circumstances, however, differ from the flaws described above regarding the GreenPoint Credit sales. The Petitioner bought the homes referenced in Petition Nos. 00001, 00005, and 00007 from Kentucky Land Company, which did not itself repossess the homes, although it did purchase the homes from an entity that had repossessed them. Moreover, the Petitioner did not purchase the homes pursuant to a sealed bid. Thus, there is no reason to believe that Kentucky Land Company was anything other than a typically motivated seller or that homes were not exposed to the market for a reasonable period of time.

m) Nonetheless, the Petitioner bought the homes referenced in Petition Nos. 00001, 00005, and 00007 for a combination of cash and the trade of a house located in Irvington Kentucky, to which the parties assigned a value of $20,000. *Pet'r Ex. 2 (Pet. Nos. 00001, 00005, 00007).* The trade of a parcel of real estate hardly qualifies as a "payment made in terms of case or in terms of financial arrangements thereto." MANUAL at 10. Consequently, these sales also lacked sufficient indicia of market value transactions and do not qualify as probative evidence of the market value-in-use of the mobile homes in question.

n) Based on the foregoing, the Petitioner failed to establish a prima facie case of error with regard to the assessments of the mobile homes referenced in Petition Nos. 0001, 00002, 00003, 00005, and 00007.

16. The Petitioner did establish a prima facie case for a reduction in the assessments of the mobile homes referenced in Petition Nos. 00004 and 00006.

a) Unlike the sales of the mobile homes referenced above, the circumstances under which the Petitioner bought the homes referenced in Petition Nos. 00004 and 00006 did not suffer from any infirmities that would deprive the sale prices of probative value in this case. The Petitioner bought those two mobile homes from Kentucky Land Company for $6,500 and $8,500, respectively. Moreover, the Petitioner paid for the transactions in cash. The record does not contain any evidence that would support an inference that those purchases were anything but market value transactions.

b) The burden therefore shifted to the Respondent to present evidence to impeach or rebut the sale prices for the mobile homes referenced in Petition Nos. 00004 and 00006. *Meridian Towers*, 805 N.E.2d at 479. The Respondent failed to do so. The Respondent simply relied upon the fact that it used the Guidelines to assess the mobile homes in question. The Respondent did not explain why a value derived under the mass appraisal method specified in the Guidelines is more probative of the market value of the mobile homes than the actual price paid by for those homes in the market place.

c) The Petitioner therefore established by a preponderance of the evidence that the assessments of the mobile homes referenced in Petition Nos. 00004 and 00006 are incorrect and that the correct assessments should be $6,500 and $8,500 respectively.

Conclusion

17. The Petitioner failed to make a prima facie case with regard to the assessments of the mobile homes referenced in the petitions ending in 00001, 00002, 00003 00005, and 00007. The Board finds in favor of the Respondent with regard to those petitions.

18. The Petitioner demonstrated by a preponderance of the evidence that the assessments for the mobile homes referenced in the petitions ending in 00004 and 00006 were incorrect. The assessment for the mobile home referenced in the petition ending in 00004 should be changed to $6500 and the assessment for the mobile home referenced in the petition ending in 00006 should be changed to $8,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments under petitions 31-013-05-1-6-00004 and 31-013-05-1-6-00006 should be changed and that the remaining 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>.