

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

Petition: 53-009-19-1-4-01040-19
Petitioner: Bigfoot Food Stores
Respondent: Monroe County Assessor
Parcel: 53-08-04-302-009.000-009
Assessment Year: 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Bigfoot Food Stores, LLC (“Bigfoot”) contested the 2019 property tax assessment of a car wash located at 1109 South Walnut Street in Bloomington. The Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) valued the property at \$170,600 for 2019. Bigfoot timely appealed to the Board.
2. The Board’s Administrative Law Judge, Jennifer Thuma, (“ALJ”) held a telephonic hearing on July 8, 2020. Neither she nor the Board inspected the property.
3. Milo Smith, Certified Tax Representative, represented Bigfoot. Marilyn Meighen, Attorney, represented the Monroe County Assessor. Mr. Smith, Monroe County Assessor Judy Sharp, and Senior Vice President for Nexus Group Ken Surface, were sworn as witnesses.

RECORD

4. The parties submitted the following exhibits:
 - Petitioner’s Ex. 1: GIS photo
 - Petitioner’s Ex. 2: List of Comparison Properties
 - Petitioner’s Ex. 3: Page from County Land Order
 - Petitioner’s Ex. 4: Property Record Card for Subject—Bigfoot Car Wash
 - Petitioner’s Ex. 5: Property Record Card-1201 S. Walnut St.
 - Petitioner’s Ex. 6: Property Record Card-1202 S. Walnut St.
 - Petitioner’s Ex. 7: Property Record Card-1150 S. Walnut St.
 - Petitioner’s Ex. 8: Property Record Card-1115 S. Walnut St.
 - Petitioner’s Ex. R-1: Additional pages from County Land Order

- Respondent's Ex. A: Property Record Card for Subject-Bigfoot Car Wash
Respondent's Ex. B: Map of Subject Property Area and supporting documents
Respondent's Ex. C: *Kooshtard Property VIII v. Shelby County Assessor*, 987 N.E.2d 1178 (Ind Tax Ct. 2013)
Respondent's Ex. D: *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)

5. The official record also contains (1) all pleadings, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing.

OBJECTIONS

6. The Assessor made the following objections:
- a. The Assessor objected to Petitioner's Ex. 3, arguing that it related to a new issue Bigfoot did not raise in its initial appeal with the Board. She claimed that the Board's small claims rules precluded Bigfoot from raising new issues about the land use order that were not included in the initial appeal form. While 52 IAC 4-5-4 prevents a party from amending its Form 131 without leaving the small claims docket, this does not prevent Bigfoot from making these arguments. Bigfoot contested the valuation of the subject property on its Form 131, and these claims relate to the valuation. Thus, the objection is overruled.
 - b. The Assessor objected to Petitioner's Ex. R-1 on the grounds that it was exchanged less than 24 hours before the hearing. As noted above, this was a small claims hearing. 52 IAC 4-8-2 provides that evidence in a small claims hearing need only be exchanged if requested not less than 10 business days before the hearing. Neither the Assessor nor her Counsel asserted that such a request was made. Thus, the objection is overruled.

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. Ind. Code. § 6-1.1-15-17.2(b) and (d).
8. Because the assessment increased less than 5% from 2018-2019, Bigfoot accepted the burden of proof. We agree that the burden lies with Bigfoot.

SUMMARY OF CONTENTIONS

9. **Bigfoot's Contentions:**

- a. Bigfoot contended that the Assessor incorrectly valued the subject property by applying a 50% influence factor to the land base rate. This made the land rate exceed the rate of the county land order, which was \$10.50/sq. foot., thus making the county land order meaningless according to Bigfoot. *Smith testimony; Pet'r. Exs. 1-8.*
- b. In addition, Bigfoot claimed that the subject property's 50% influence factor was unfair and not uniform because the Assessor applied a 0% influence factor to other properties at the same intersection, and a 125% influence factor to the adjacent convenience store. *Smith testimony; Pet'r. Exs. 1-8.*

10. **Assessor's Contentions:**

- a. The Assessor argued that Bigfoot did not meet its burden of proof because instead of providing evidence of a different market value, Bigfoot merely argued that the Assessor applied the methodology incorrectly. *Surface testimony; Resp't. Exs. A-D.*
- b. Ken Surface, Senior Vice President for Nexus Group, explained that the Assessor applied the same land base rate to the comparison properties Bigfoot submitted as evidence. He further testified the subject received only a 50% positive influence because it does not have direct egress and ingress. Finally, he stated that the Assessor applied no influence factors to the other nearby properties because they were valued using an income capitalization approach because they are leased. *Surface testimony; Resp't. Exs. A, B..*

ANALYSIS

11. Bigfoot failed to make a prima facie case for any change in the assessment. We reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.

- b. In an assessment appeal, a market value-in-use appraisal compliant with the Uniform Standards of Professional Appraisal Practice is often the best evidence of a property's true tax value. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Parties may also offer any other evidence that is relevant to a property's true tax value, such as actual construction costs, sales information for the property under appeal, and sales or assessment information for comparable properties. MANUAL at 3; see also *Eckerling*, at 674; Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals).
- c. Simply attacking the methodology an assessor uses to calculate an assessment or strictly applying the assessment guidelines normally does not meet a taxpayer's burden of proof. See *Eckerling*, at 678. A party must then also relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.*
- d. In this case, Bigfoot argued that the Assessor should not have applied a positive influence factor to the subject property's land rate. This argument deals precisely with the methodology the Assessor used to develop her assessment. As discussed above, this is insufficient. Instead, a taxpayer must provide its own reliable, market-based evidence of value, which Bigfoot failed to do.
- e. To the extent Bigfoot argued that it did not receive a uniform and equal assessment because other, purportedly comparable properties did not receive positive influence factors like the subject property, it failed to make a case. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment, one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. See *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. See *Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App 1994)). Bigfoot failed to demonstrate that it used generally accepted standards or provided a statistically reliable sample. Thus, this argument fails.
- f. Because Bigfoot failed to meet its burden of proof by providing reliable market-based evidence of value, or demonstrating that any other relief was warranted, we find for the Assessor.

FINAL DETERMINATION

12. The Board finds for the Assessor and orders no change to the subject property's 2019 assessment.

ISSUED: October 6, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.