

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

Petition No.: 53-005-20-1-4-00816-20
Petitioner: Kooshtard Property V LLC
Respondent: Monroe County Assessor
Parcel: 53-01-30-058-000.000-005
Assessment Year: 2020

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

Procedural History

1. The Petitioner appealed the 2020 assessment of its property located at 527 E. 3rd St. in Bloomington.
2. On November 12, 2020, the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 valuing the property at \$794,100 for land and \$115,100 for improvements for a total assessment of \$909,200.
3. The Petitioner timely filed an appeal with the Board, electing to proceed under the small claims procedures.
4. On May 27, 2021, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Melissa Michie appeared as the Petitioner’s attorney. Marilyn Meighen appeared as the Respondent’s attorney. Milo Smith, the Petitioner’s tax representative, and Ken Surface, consultant for Nexus Group both testified under the penalties for perjury.

Record

6. The parties submitted the following exhibits:
 - Petitioner Exhibit 1: The Monroe County Land Order and email correspondence between Petitioner’s Representatives and County Assessor’s office,
 - Petitioner Exhibit 2: List of parcels in neighborhood #53005082-005,
 - Petitioner Exhibit 3: Real Property Assessment Guidelines, Chapter 2, pages 8 and 9,

- Petitioner Exhibit 4: Indiana Code § 6-1.1-4-13.6 – Determination and review of land values,
- Petitioner Exhibit 5: Indiana Administrative Code – Article 2.3 Real Property Assessment Manual (Repealed),
- Petitioner Exhibit 6: Article 2.3 Real Property Assessment Manual – 50 IAC 2.3-1-1 Applicability, provisions, and procedures,
- Petitioner Exhibit 7: Indiana Administrative Code – Article 2.4 Real Property Assessment Manual – 50 IAC 2.4-1-1 Applicability; provisions; procedures,
- Petitioner Exhibit 8: Petitioner’s comparison of 50 IAC 2.3-1-1 vs. 50 IAC 2.4-1-1,
- Petitioner Exhibit 9: 2002 Real Property Assessment Manual, page 6,
- Petitioner Exhibit 10: 2011 Real Property Assessment Manual, page 3,
- Petitioner Exhibit 11: 2020 subject property record card.
- Respondent Exhibit A: 2019 subject property record card,
- Respondent Exhibit B: 2020 subject property record card,
- Respondent Exhibit E: Real Property Assessment Guidelines, Chapter 2, pages 13, 14, 43, 47 and 48,
- Respondent Exhibit G: *Kooshtard Property VIII, LLC v. Shelby County Assessor*, 987 N.E.2d 1178 (Ind. Tax Ct. 2013),
- Respondent Exhibit H: *Kooshtard Property V v. Monroe County Assessor*, pet. nos. 53-005-10-1-4-00032, 53-005-12-1-4-00117 & 53-005-13-1-4-00117 (Ind. Bd. Tax Rev. 2014),
- Respondent Exhibit I: *Mac’s Convenience Store-1115 South Walnut Street v. Monroe County Assessor*, pet. no. 53-009-19-1-4-01037-19 (Ind. Bd. Tax Rev. 2020),
- Respondent Exhibit J: *Bigfoot Food Stores v. Monroe County Assessor*, pet. no. 53-009-19-1-4-01040-19 (Ind. Bd. Tax Rev. 2020).¹

7. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or the ALJ; and (3) a digital recording of the hearing.

Contentions

8. Summary of the Petitioner’s case:
- a) The subject property is a convenience store and gas station on .36 acres of land. The Petitioner contends the Respondent incorrectly valued the subject property by applying a 100% influence factor to the established land base rate for the neighborhood. *Michie argument; Smith testimony.*

¹ The Respondent submitted Respondent Exhibits C, D, F, F-1, F-2, F-3, F-4 and F-5 but did not enter them into the record.

- b) Indiana Code § 6-1.1-4-13.6 states that assessing officials shall determine the value of all classes of land using the guidelines established by the Department of Local Government Finance. The County Land Order set the high and low land base rate at \$25 per square foot for the subject neighborhood. The Petitioner argues that the 100% influence factor applied to the subject property's land exceeds the base rate and thus renders the County Land Order meaningless. *Smith testimony; Pet'r Exs. 1, 2 & 4.*
- c) The Real Property Assessment Guidelines require assessors to set detailed criteria for how they use influence factors. But the Assessor has not provided the Petitioner with any documentation showing these criteria. The subject property record card shows that an influence factor was added to the land "during review process." The Petitioner argues it is unclear what criteria was used to apply the influence factor. *Michie argument; Smith testimony; Pet'r Exs. 3 & 11.*
- d) The Petitioner claims the subject property's 100% influence factor was unfair and not uniform in the neighborhood because the Respondent did not apply an influence factor to a majority of the other properties in the same neighborhood. Out of the 41 parcels in the neighborhood only 9 properties had a 100% influence factor on the land. One of those parcels was the subject property. In addition, three out of eleven parcels are classified as "other retail structures" with a 100% influence factor applied to the land. Three out of fifteen parcels are corner lots with 100% influence factors on the land. Finally, two other non-exempt parcels located at a nearby intersection in the same neighborhood have no influence factor applied to the land. *Michie argument; Smith testimony; Pet'r Ex. 2.*
- e) Smith testified that the Petitioner is "appealing the process not the market value of the property." *Smith testimony.*

9. Summary of the Respondent's case:

- a) The Respondent argues that the Petitioner did not meet its burden of proof because instead of providing evidence of a different market value-in-use, the Petitioner merely argues the Respondent applied the methodology incorrectly. Specifically, the Petitioner has shown the land base rate in the neighborhood is \$25 per square foot and that influence factors were applied to some properties, but not to all the properties in the neighborhood. Conclusory statements about an assessor's methodology are not sufficient to support a change in the assessment. *Meighen argument; Resp't Exs. G, H, I, J.*
- b) The Respondent argues that to prove the subject property's assessment was not uniform, the Petitioner should have submitted a ratio study that compares assessments

of properties to sales or appraisal from statistically reliable data. The Petitioner did not provide this type evidence in this appeal. *Meighen argument; Resp't Ex. J.*

- c) The Respondent also argues that to prove a subject property's market value-in-use using comparable assessments under Indiana Code § 6-1.1-15-18 a party must show the properties are comparable with generally accepted appraisal and assessment practices. Conclusory statements that a property is similar or comparable are not enough. In addition, the fact that two properties are in the same neighborhood does not mean they are necessarily comparable. *Meighen argument; Pet'r Ex. H.*
- d) The Real Property Assessment Guidelines in 2002 and again in 2011 outline that taxpayers must show with probative evidence that the assessed value assigned to the property is incorrect and what the market value-in-use of the property actually is. The Petitioner has not presented any market-based evidence. *Meighen argument.*
- e) Ken Surface explained that the land base rate in the subject property's neighborhood was established at \$25 per square foot using market data and has not changed in several years including the year under appeal. He noted that the subject property has also had a positive influence factor on the land for "several years." Mr. Surface stated that the Petitioner's evidence has not shown the land base rate, or the influence factor applied to the subject land has resulted in the property being over-assessed. *Surface testimony.*

Burden of Proof

- 10. 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).
- 11. Here, the parties agree the assessment did not increase by more than 5% between 2019 and 2020, in fact the total assessment was \$909,200 for 2019 and 2020. Therefore, the burden-shifting statute does not apply, and the burden remains with the Petitioner.

Analysis

- 10. The Petitioner failed to make a prima facie case for reducing the assessment.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income

approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Id.*

- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *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. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For the 2020 assessment, the valuation date was January 1, 2020. *See* Ind. Code § 6-1.1-2-1.5.
- c) Here, the Petitioner argues the Assessor erred in applying a positive influence factor to the subject property's land value because she did not correctly apply the Guidelines. Even if the Assessor made errors, simply attacking the methodology is insufficient to rebut the presumption that the assessment is correct. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). To make a case, a taxpayer must show the current assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is). To do so, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.* Here, the Petitioner primarily argues that the Assessor failed to detail the criteria for applying an influence factor, but it failed to present any probative market-based evidence supporting a different value for the property. Without such evidence, it is not entitled to any relief.
- d) Finally, the Petitioner claims that the subject property's assessment was not uniform and equal compared to other assessments. 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. Assessor*, 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. *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. *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)).

- e) When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter County Assessor*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).
- f) Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to explain how the other properties it referenced are sufficiently comparable to draw any meaningful inference about the uniformity or equality of its assessment. In addition, the Petitioner failed to compare the neighboring properties' assessments to objectively verifiable data, such as a sale price or market value-in-use appraisal. Instead, the Petitioner wanted the Respondent to use the same methodology (apply the same base rate and remove the influence factor) to assess the subject property's land as used to assess the neighboring properties' land. The Tax Court has rejected that type of claim. *See Westfield Golf*, 859 N.E.2d at 398-399 (rejecting taxpayer's uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). The Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments.
- g) Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 11. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Board orders no change to the 2020 assessment.

ISSUED: AUGUST 25, 2021

Chairman, Indiana Board of Tax Review

Betsy J. Brand

Commissioner, Indiana Board of Tax Review

Jonathan R. Elms

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 after 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>>.