

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

Petition: 53-013-19-1-4-01038-19
Petitioner: Virgil & Joyce Ross (Mac’s Convenience Store)
Respondent: Monroe County Assessor
Parcel: 53-04-10-200-200.000-013
Assessment Year: 2019

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

PROCEDURAL HISTORY

1. Virgil and Joyce Ross, doing business as Mac’s Convenience Store (“Mac’s”), contested the 2019 property tax assessment of a convenience store/gas station located at 504 West Temperance Street in Ellettsville. The Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) determined the assessed value to be \$390,400 for 2019. Mac’s 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 Mac’s. 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 Map
 - Petitioner’s Ex. 2: List of Comparison Properties
 - Petitioner’s Ex. 3: Property Record Card—Subject
 - Petitioner’s Ex. 4: Property Record Card—509 W. Temperance St.
 - Petitioner’s Ex. 5: Property Record Card—609 W. Temperance St.
 - Petitioner’s Ex. 6: Property Record Card—614 W. Temperance St.
 - Petitioner’s Ex. 7: Land Order
 - Petitioner’s Ex. 8: Ind. Code § 6-1.1-4-13.6
 - Petitioner’s Ex. 9: DLGF Guidelines—Depreciation-Appendix F
 - Petitioner’s Ex. 10: Property Record Card—Subject, Page 2

Petitioner's Ex. 11: DLGF Guidelines—Depreciation Conversion Chart
Petitioner's Ex. 12: DLGF Guidelines—Depreciation-Life Structure Chart
Petitioner's Ex. 13: DLGF Guidelines—Depreciation-Commercial Structures

Respondent's Ex. A: Property Record Card—Subject

Respondent's Ex. B: Photo of Subject Property

Respondent's Ex. C: Photo of Subject Property

Respondent's Ex. D: *Kooshtard Property VI, LLC v. White River Township, Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2005)

Respondent's Ex. E: *Irwin Union Capitol Corp. v. Columbus Township Assessor* (IBTR November 15, 2007).

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 Exhibits 1-8, arguing that they related to new issues not included in the small claims appeal form Mac's filed with the Board, which noted only that the Assessor incorrectly calculated depreciation. She argued that the Board's repealed rule 52 IAC 3-1-2- (b) and the current rule 52 IAC 4-5-4 (c) prohibit a party from bringing issues not contained in the original petition. Mac's contended that the old rules applied because it filed the appeal before the Board adopted new rules. Mac's argued that the old rules do not limit parties only to the appeal of issues brought before the PTABOA. While 52 IAC 4-5-4 prevents a party from amending its Form 131 without leaving the small claims docket, this does not prevent Mac's from making these arguments. Mac's contested the valuation of the subject property on its Form 131, and these claims relate to the valuation. Thus, the objections are 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. In this appeal, the assessment decreased in 2019 from 2018. Mac's accepted the burden of proof. We agree that the Mac's has the burden of proof.

SUMMARY OF CONTENTIONS

9. **Mac's Contentions:**

- a. Mac's argued that the Assessor incorrectly valued its property and assessed it unequally as compared to other nearby properties with lower base rates. In particular, Mac's argued that the Assessor should have used the land base rate established in the Land Order in accordance with Ind. Code § 6-1.1-4-13.6. According to Smith, that rate was \$150,000 per acre but the Assessor used a rate of \$175,000 per acre. *Smith testimony; Pet'r Ex. 1-6.*
- b. Mac's also claimed that the Assessor did not apply the DLGF guidelines correctly to determine depreciation. Instead of applying the 52% appreciation that Mac's claims was warranted by the subject property's 1991 construction date, the Assessor applied 24% depreciation. Mac's also argued that the Assessor must use only the DLGF formulas to determine depreciation. *Smith testimony.*

10. **Assessor's Contentions:**

- a. The Assessor argued that Mac's did not meet its burden of proof because instead of providing evidence of a different market value, Mac's merely argued that the Assessor applied the methodology incorrectly. *Surface testimony.*
- b. The Assessor also argued that she is permitted to use a value higher or lower than the land order because it is only a starting point. In this case, she used a land base rate of \$175,000 per acre for this property based upon a survey all of convenience store property values in the county. *Sharp testimony; Surface testimony.*
- c. To develop the assessment, the Assessor made adjustments for market factors, and to reflect upgrades to the improvements on the property. These included a substantial structural change to an outside wall, increasing the total square footage with an addition, and modernizing the original structure. She used the original age for the part of the building that was constructed in 1991, which consisted of 1411 square feet. She then included the addition that was built later, at 137

square feet. Based on the new addition, as well as renovations to the original structure, she recalculated the weighted age and arrived at 24% depreciation for the subject building. She ultimately arrived at a market-value-in-use for 2019 of \$390,400. *Surface testimony; Sharp testimony; Resp't. Ex. A-C.*

ANALYSIS

11. Mac's 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 DLGF rules. 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*, 841 N.E. at 674; I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals).
 - c. Simply attacking the methodology used to calculate an assessment or strictly applying the assessment guidelines normally do not meet a taxpayer's burden of proof. See *Eckerling*, 841 N.E.2d at 678. A party must provide evidence that the assessed value itself is incorrect and 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, Mac's focused its argument on what base rate the Assessor used to assess the subject property and how she calculated depreciation. Both of these are part of 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 Mac's failed to do.
 - e. To the extent Mac's argued that it did not receive a uniform and equal assessment because other, purportedly comparable properties were assessed at lower base

rates than 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)). Mac’s failed to demonstrate that it used generally accepted standards or provided a statistically reliable sample. Thus, this argument fails.

- f. Because Mac’s 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>>.