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

Petition No.: **41-009-20-1-4-00793-21**
Petitioner: **McDonald's Real Estate Company**
Respondent: **Johnson County Assessor**
Parcel: **41-08-14-022-022.000-009**
Assessment Year: **2020**

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 appealed the 2020 assessment of its property located at 1139 North Morton Street in Franklin.

2. On October 19, 2021, the Johnson County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 valuing the property at $215,900 for land and $678,000 for improvements for a total assessment of $893,900.

3. The Petitioner timely filed an appeal with the Board, electing to proceed under the small claims procedures.

4. On March 3, 2022, 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. Johnson County Assessor's appraiser, Michael Watkins appeared for the Respondent and was sworn.

Record

6. The parties submitted the following exhibits:

Petitioner Exhibit 1:	Indiana Code § 6-1.1-4-13.6 – Determination and review of land values,
Petitioner Exhibit 2:	Emails between Melissa Michie and Mark Alexander, Johnson County Assessor,
Petitioner Exhibit 3:	Document labeled "Land Rates" for neighborhood 4134002,

Petitioner Exhibit 4: *Muir Woods Section One Assoc., Inc. v. Marion Cnty. Ass'r,* 172 N.E.3d 1205 (Ind. 2021).

Respondent Exhibit 1: 2019 subject property record card,
Respondent Exhibit 2: 2020 subject property record card.[1]

a) 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 ALJ; and (3) a digital recording of the hearing.

Contentions

7. Summary of the Petitioner's case:

a) The Petitioner contended the Respondent incorrectly valued the subject property's land by applying an incorrect land base rate of $216,000 per acre in violation of Indiana Code § 6-1.1-4-13.6. The Petitioner argued that the Assessor should have instead used a base rate of $200,000 based on an unlabeled document it claims was provided by the Assessor. In addition, the Petitioner pointed to the recent Indiana Supreme Court decision in *Muir Woods Section One Assoc. Inc. v. Marion Cnty. Ass'r*. 172 N.E.3d 1205 (Ind. 2021). *Michie argument; Pet'r Exs. 1-4.*

8. Summary of the Respondent's case:

a) The Respondent argued 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 contested the methodology used to determine the assessment. *Watkins argument.*

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2[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).

10. Here, the parties agree the assessment did not increase by more than 5% between 2019 and 2020, in fact the assessment decreased from $930,000 in 2019 to $893,900 in 2020.

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[1] The Respondent submitted Respondent Exhibits 3, 4, 5, 6, 7 and 8 but did not offer them at hearing.

[2] I.C. § 6-1.1-15-17.2 was repealed by P.L.174-2022 on March 21, 2022. We analyze the law as it existed at the time of the evidentiary hearing.

Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply and the burden remains with the Petitioner.

Analysis

11. 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.

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) We first note that the Petitioner called no witnesses at the hearing. While its exhibits were admitted without objection, some of those exhibits, including Pet'r Ex. 3, the "land rates" document, do not fully speak for themselves without some explanation. Ultimately, "it is the taxpayer's duty to walk the Indiana Board ... through every element of the analysis." *Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r,* 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). As we discuss more below, the Petitioner's failure to provide a knowledgeable witness to explain its evidence is fatal to its claim regardless of any other factors.

d) The Petitioner claims that the Assessor did not use the correct base rate for the subject property. It based this argument on the recent Indiana Supreme Court decision in *Muir Woods Section One Assoc. Inc. v. Marion Cnty. Ass'r.* 172 N.E.3d 1205 (Ind. 2021) as well as I.C. § 6-1.1-4-13.6. The Petitioner provided almost no explanation as to how *Muir Woods* applies to this case, and we do not find it controlling. That case dealt only with whether the application of a prescribed discount rate to an already determined base-rate for common area land was an objective question that was correctable on a Form 133 petition for correction of error. By its own language that case involved "unique circumstances involving the use of a now defunct tax appeal form" with a holding that was "focusing only on the narrow challenge before us today." *Id.* at 1208. For these reasons we find it has little application to this case,

particularly with no cogent reasoning from the Petitioner showing how the facts are similar.

e) Turning to I.C. § 6-1.1-4-13.6, we agree with the Petitioner that that statute mandates the Assessor "use the land values determined under this section." I.C. § 6-1.1-4-13.6(c). But it does not provide that true tax value necessarily equals the values determined using those rates. Even if the Assessor erred in applying the base rates, it has long been the case that 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 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.*

f) Neither *Muir Woods,* I.C. § 6-1.1-4-13.6, nor the Tax Court's recent cases of *Bushmann, LLC v. Bartholomew Cty. Assessor*, Ind. Tax LEXIS 13 (Ind. Tax Ct. 2022) and *Chevrolet of Columbus, Inc. v. Bartholomew Cty. Assessor*, 2022 Ind. Tax LEXIS 14 (Ind. Tax Ct. 2022) purport to overrule those principles. Rather the Tax Court has continued to endorse those principles, holding that a taxpayer must present "objectively verifiable, market-based evidence to show that the property's assessed value does not reflect its market value-in-use." *Piotrowski BK #5643, LLC v. Shelby Cnty. Ass*'r, 177 N.E.3d 127 (Ind. Tax Ct. 2021).

g) Finally, we note that even were we to accept the Petitioner's theory, we would still not be able to offer any relief. In support of its claims that the Assessor used the incorrect base rate, the Petitioner provided a document that it claims are the correct base rates and an email exchange with the Assessor's in which he states "The 2020 land values for each neighborhood are attached." As discussed above, the Petitioner did not provide any witness to explain its evidence. Were it not for the property record card provided by the Assessor, we would not even be able to tell whether Pet'r Ex. 3 referred to the correct neighborhood.

h) As it stands, there are several issues with the conclusions the Petitioner has drawn from the evidence. First, there is no year listed on the exhibit. While the email states they are "2020" land values, it is unclear whether this was a reference to 2019 pay 2020, or 2020 pay 2021, the year under appeal. The 2019 assessment for the subject property does use the $200,000/acre rate the Petitioner claims should have been used. *Resp't Ex. 1.* It is entirely possible that this document applies only to that year. Without more evidence, we cannot draw any conclusions on that issue. In addition, the exhibit has two separate sections for "Primary", with different available values listed under different codes. There is no evidence in the record about when each

respective section should be used or what the codes mean. We cannot conclude that the Petitioner's purported conclusion of $200,000/acre is what was required without a reliable witness to explain the exhibit. Thus, even were we to accept the Petitioner's legal theory, we would still deny relief because it failed to provide reliable evidence proving the elements of its case.

i) For these reasons we find the Petitioner has failed to make a prima facie case for any reduction in the assessment. "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).

Final Determination

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

ISSUED: MAY 31, 2022

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 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>.