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

Petition:	**27-023-03-1-4-00023**
	27-023-03-1-4-00025
Petitioner:	**Big Foot Stores, LLC,**
Respondent:	**Mill Township Assessor (Grant County)**
Parcel:	**0734-301-002.000-23**
	0734-302-034.000-23
Assessment Year:	**2003**

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

Procedural History

1. The Petitioner initiated the appeals process with the County Property Tax Assessment Board of Appeals (PTABOA) by filing written documents dated January 13, 2006.

2. The PTABOA mailed notices of its decision to the Petitioner on June 19, 2006.

3. The Petitioner filed the Form 131 appeals to the Board on July 17, 2006, and elected small claims procedures.

4. The Board issued notices of hearing to the parties dated June 5, 2007.

5. Administrative Law Judge Patti Kindler held an administrative hearing in Marion on July 26, 2007.

6. Attorney Timothy J. Vrana represented the Petitioner. Attorney Marilyn S. Meighen represented the Respondent. The following persons were present and sworn as witnesses at the hearing:
   For the Petitioner - Milo E. Smith, Certified Tax Representative,
   For the Respondent - Tamara Martin, County Assessor,
   Gary Landrum, Deputy County Assessor.

Facts

7. Parcel 0734-301-002.000-23 contains an office building located at 322 E. Main Street in Gas City, Indiana. The PTABOA determined the assessed value of land is $8,800 and the improvement value is $364,500. The total assessed value for this parcel is $373,300. The Petitioner contended the land value should be $8,800 and the improvement value should be $120,000. On that basis, the total assessed value would be $128,800.

8. Parcel 0734-302-034.000-23 contains a convenience store located at 300 E. Main Street, Gas City, Indiana. The PTABOA determined the assessed value of land is $52,800 and the improvement value is $677,300. The total assessed value for this parcel is $730,100. The Petitioner contended the land value should be $52,800 and the improvement value should be $244,800. On that basis, the total assessed value would be $297,600.

9. The Administrative Law Judge did not conduct an inspection of either property.

Issue

10. Summary of the Petitioner's contentions:

a) The assessor increased the assessment of the improvements for 2003 via Notices of Assessment by Assessing Officer (Form 113) because sales disclosure forms revealed a sale price greater than the assessment. *Petitioner Exhibit 4*. This interim assessment increase violates the Indiana Constitution, Indiana Tax Court decisions and the Indiana Code regarding assessment procedures. *Vrana argument*.

b) The improvements did not physically change between the 2002 and 2003 assessment years. In *K.P. Oil v. Madison Twp. Assessor*[1], the Indiana Tax Court concluded that when no changes occur to the property to affect its general reassessment value, that value must be carried forward until the next reassessment. The Tax Court does not allow interim assessments when there has been no change to the features of the property. The Grant County assessing officials should reduce the current assessment to the 2002 reassessment values. *Vrana argument*.

c) Ind. Code § 6-1.1-4-30 states that, when making interim assessments, the general reassessment standards and regulations are the same as those used in the preceding general reassessment. *Petitioner Exhibit 6*. Accordingly, the Respondent was required to receive approval from the Department of Local Government Finance to use an assessment method other than the cost approach. 50 IAC 2.3-1-1(e). In changing the assessment for 2003, the assessor relied on sales evidence rather than the cost approach as the specific assessing method. *Smith testimony*. The use of evidence regarding fair market value is specifically limited to taxpayers. The assessor was not permitted to use such evidence to make an interim assessment. *Id.,* citing 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2) (Manual) at 5*; Vrana argument*.

d) Additionally, the market value evidence utilized by the assessor does not equal True Tax Value. The sale price of the subject properties does not reflect actual market value because an investment group purchased the convenience stores in a

[1] *K.P. Oil v. Madison Twp. Assessor,* 818 N.E.2d 1006 (Ind. Tax Ct. 2004).

bundle based on promised rent, which pays the investment back. It is a means of raising capital and a type of financing where the buyers tend to pay significantly more than the market value of the properties. This return on the investment is a capitalization technique. *Smith testimony*.

e) The Indiana Constitution requires assessments to be uniform and equal. The subject property's assessment is considerably higher than the assessments of comparable properties, demonstrating inequalities in the assessments. *Smith testimony*. In support of this contention, the Petitioner submitted property record cards and compared square footages, years built, interior layouts and story and construction type for four comparable Grant County convenience stores. *Petitioner Exhibits 9 - 12*. Assessments of these four convenience stores ranged from $14 per square foot to $62 per square foot, while the subject property is assessed at $89 (office building) and $187 (convenience store) per square foot. *Petitioner Exhibit 12 at 2*. The comparable properties identified by the Petitioner support the contention that the assessing officials did not assess the subject properties in a manner similar to the comparable properties. *Smith testimony*.

f) Due process, a constitutional right, ties in with the uniform and equal argument to the extent that only those convenience stores which have sold or had appeals filed have had their assessments increased in Grant County. The law does not permit an assessing official to single out a property when a Petitioner has filed an appeal. *Vrana argument*.

g) The county assessor failed to utilize assessment studies as a means to attain a just and equal basis of assessment among taxpayers in the county under Ind. Code § 6-1.1-13-6. If the assessment ratio study shows the assessment is inaccurate or non-uniform, the remedy is equalization. *Smith testimony*.

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

a) There is no requirement under Indiana law that a uniform methodology must be used in assessment. The Manual explains that the different methodologies used in assessment include the cost approach, sales comparison approach and income approach. It is appropriate to use any one of the three approaches to value as long as the assessing official arrives at the correct bottom line value. *Meighen argument; Respondent Exhibit K*.

b) The assessor increased the subject assessments and sent the notices of assessment after the Petitioner filed the appeal and the assessor discovered sales disclosure forms for the appealed property. *Landrum testimony*. A sales disclosure form dated June 19, 2002, reported a sale price for the subject properties of $1,250,000, with $99,000 of that value representing personal property. *Id.; Respondent Exhibit F*. An additional sales disclosure form dated July 16, 2003, reported a sale price of $1,002,816, with $150,422 of that amount identified as personal property. *Landrum testimony; Respondent Exhibit G*. The assessor did not

review the assessments of forty to fifty other convenience stores in the county due to time restrictions. *Landrum testimony*.

c) One way a taxpayer may make a uniformity claim is to provide a ratio study comparing the ratio between the assessed values and the market values on this class of property. The taxpayers did not provide a ratio study in this appeal. *Meighen argument*. The Petitioner's submission of evidence concerning three or four comparable convenience stores is insufficient to show there is a uniformity problem. Westfield Golf Practice Center attempted to make a case in a similar fashion.[2] The Tax Court refused relief in that case because the taxpayer did not establish the total assessed value was incorrect. The Petitioner in the current appeal also failed to show the total assessed value for the subject property is incorrect. *Id.; Respondent Exhibit J*.

d) The Petitioner argued that it did not get due process of the law, but that claim was not raised as an issue on the Petition. Due process means having an opportunity to challenge a decision and provide evidence. The Petitioner has had that opportunity. *Meighen argument*.

e) In prior decisions, the Board rejected the argument that an assessor cannot change values during the interim period between general reassessments. *Meighen argument*. The sole reason the improvement value was changed was that an appeal was filed and it brought to light the sales disclosure forms for the subject property.[3] When filing an appeal, the Petitioner takes the risk that the assessment may increase. *Id.*

Record

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

a) The Petitions,

b) The digital recording of the hearing,

c) Petitioner Exhibit 1 – 2002 Real Property Assessment Manual,[4]
Petitioner Exhibit 2 – 2002 property record card (PRC) for the subject property (one for each parcel),
Petitioner Exhibit 3 – 2003 PRC for the subject property (one for each parcel),
Petitioner Exhibit 4 – Form 113 (one for each parcel),
Petitioner Exhibit 5 – Ind. Code § 6-1.1-4-4.5,
Petitioner Exhibit 6 – Ind. Code § 6-1.1-4-30,

[2] *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor, et al.,* 859 N.E.2d 396 (Ind. Tax Ct. 2007).
[3] The Forms 113 are signed December 5, 2005. The written documents (Form 130) initiating the appeal process are not dated until January 13, 2006.
[4] The Petitioner's exhibit cover sheet lists the Manual as an exhibit. Although the Petitioner made reference to various sections of the Manual at the hearing, the Petitioner did not introduce it as an exhibit.

Petitioner Exhibit 7 – Ind. Code § 6-1.1-4-25,
Petitioner Exhibit 8 – Ind. Code § 6-1.1-4-4,
Petitioner Exhibit 9 – PRC for comparable property 1,
Petitioner Exhibit 10 – PRC for comparable property 2,
Petitioner Exhibit 11 – PRC for comparable property 3,
Petitioner Exhibit 12 – PRC for comparable property 4, with summary of comparable properties and location map,
Petitioner Exhibit 13a – The Petitioner's requested value for Petition 0023,
Petitioner Exhibit 13c – The Petitioner's requested value for Petition 0025,[5]
Respondent Exhibit A – PRC for Petition ending in 00025,
Respondent Exhibit B – Photograph of the subject parcels,
Respondent Exhibit C – Aerial photograph,
Respondent Exhibit D – PRC for Petition ending in 0023,
Respondent Exhibit E – Photograph of property for Petition ending in 0023,
Respondent Exhibit F – Sales disclosure form dated June 19, 2002,
Respondent Exhibit G – Sales disclosure form dated July 16, 2003,
Respondent Exhibit H – Summary of assessed values,
Respondent Exhibit I – PRCs for contiguous parcels,
Respondent Exhibit J – *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor, et al.,* 859 N.E.2d 396 (Ind. Tax Ct. 2007),
Respondent Exhibit K – 2002 Real Property Assessment Manual, pages 1, 2, 3, 4, 11, 12, 20, 21, 22,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
Board Exhibit D – Notice of Appearance for the Petitioner's Attorney Vrana,
Board Exhibit E – Notice of Appearance for the Respondent's Attorney Meighen,

d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:

a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving 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 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is

[5] The Petitioner did not present any Exhibit 13b.

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.

14. The Petitioner did not make a case for any assessment change. This conclusion was arrived at because:

a) "A general reassessment, involving a physical inspection of all real property in Indiana" began in July 1, 2000, and was effective for assessments as of March 1, 2002. Ind. Code § 6-1.1-4-4(a). The next general reassessment is not scheduled to begin until July 1, 2009. Ind. Code § 6-1.1-4-4(b).

b) The Petitioner argued that once the general reassessment was completed, the Respondent cannot change the assessment until the next general reassessment, unless there was a change in the property.[6] That argument, however, overlooks statutes specifically allowing for interim assessments and reassessment of undervalued property.[7]

c) In *K.P. Oil*, the Tax Court addressed an interim assessment in the absence of any changes. K.P. Oil originally appealed from the 1995 general reassessment of its property because the assessor had valued its land using a base rate of $900 per front foot. K.P. Oil claimed the land was unplatted, and consequently should have been assessed at $24,750 per acre. On that appeal, the State Board of Tax Commissioners found that the land was not platted and it should have been assessed for no more than $24,750 per acre. *K.P. Oil*, 818 N.E.2d at 1007. The assessor was prevented from seeking judicial review. Following that determination, the PTABOA reassessed K.P. Oil's land in 1999, again using a rate of $900 per front foot because the lot actually was platted. *Id*. On review, the Tax Court stated, "assessing officials may reassess real property between general reassessments in order to reflect changes to the property itself or in the use of the property that may increase or decrease the assessment value…. However, when no changes occur to the property to affect its general reassessment value, that value must be carried forward until the next general reassessment." *K.P. Oil*, 818 N.E.2d at 1008 (citations omitted). The Tax Court held that the value from the 1995 assessment should carry forward, rather than upholding the PTABOA's interim reassessment. *Id*. at 1009.

[6] The Petitioner concedes that starting with assessments as of March 1, 2006, assessing officials can make annual adjustments. *See* Ind. Code § 6-1.1-4-4.5.
[7] *See* Ind. Code Ind. § 6-1.1-4-30; Code § 6-1.1-9; Ind. Code § 6-1.1-13.

d) The Respondent argues that *K.P. Oil* must be read narrowly in light of statutory authority for assessors to increase assessments in interim years between general reassessments. According to the Petitioner, that authority applies only when there have been intervening changes in the physical characteristics or use of the property. The Petitioner, however, cited no statutes that contain such a limitation.

e) The Tax Court did not read such a limitation into Ind. Code § 6-1.1-9-1 when faced with a claim that a county board of review had the authority to conduct an interim reassessment under that statute. *See Lakeview Country Club v. State Bd. of Tax Comm'rs*, 565 N.E.2d 392, 397 (Ind. Tax Ct. 1991). In *Lakeview*, the Tax Court recognized that Ind. Code § 6-1.1-9-1 authorizes local assessing officials to increase assessments for undervalued real property between general reassessments. Moreover, it did so where there had been no change to the use or zoning of the property and where the purported basis for the change was that the property had been undervalued in the prior general reassessment.

f) The Tax Court did not address or disavow its statements in *Lakeview* when it decided *K.P. Oil*, nor did it address Ind. Code §6-1.1-9-1. Accordingly, the Board does not read *K.P. Oil* to preclude a local assessor from increasing a real property assessment in years between general reassessments where the assessor believes that such property has been undervalued.

g) Each tax year stands alone. If an assessing official were bound to the value determined during a general reassessment, then evidence of that property's assessment in a general reassessment year would be probative of its value in subsequent years. The Tax Court, however, has determined that evidence of an assessment in one tax year is not probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs,* 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). The Petitioner's argument that the assessments in question cannot be changed between general reassessments does not square with precedent that each year stands alone.

h) Real property is assessed on the basis of its true tax value, which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id*. at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. "[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of 'True Tax Value'…No technical failure to comply with the procedures of a specific

assessing method violate this [assessment] rule so long as the individual assessment is a reasonable measure of 'True Tax Value'…" 50 IAC 2.3-1-1(d).

i) The Petitioner argued that assessing officials are limited to only applying the cost approach in the Guidelines. The Petitioner is wrong. The Tax Court explained how Indiana's assessment system has changed: "Simply put, under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value *is actually correct*." *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). The Manual and Guidelines provide that assessing officials can use a variety of approaches to determine a property's market value in use more accurately. *Id.* Consideration of the sale price of the subject property is acceptable.

j) The Petitioner had the burden to present an appraisal, sales information, or other market data to establish the true tax value of the improvements. The Petitioner did not do so, but primarily contended the local assessing officials did not strictly apply the Guidelines' cost approach. The purported errors identified by the Petitioner focus on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioner failed to show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

k) The testimony about the sale price of the subject properties not being evidence of market value (because the transaction was a means to raise capital and a type of financing where buyers tend to pay significantly more than market value) was conclusory. Such statements are not probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

l) The Petitioner established the assessed values of other purportedly comparable convenience stores, asserting the range of assessed values for the subject property and those other stores demonstrates a lack of the uniformity and equality in the assessments required by the Indiana Constitution. The Petitioner did not show the market value-in-use of either the property under appeal or the alleged comparable properties. Therefore, the evidence is insufficient to establish any violation of the Indiana Constitution. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor, et al.,* 859 N.E.2d 396 (Ind. Tax Ct. 2007).

m) The Petitioner claimed that the assessment violates due process because only those convenience stores which have sold or filed an appeal have had their

assessments increase. Due process requires "an opportunity to meet and rebut adverse evidence." *See Castello v. State Bd. of Tax Comm'rs,* 638 N.E.2d 1362, 1365 (Ind. Tax Ct. 1994). As discussed, local officials may reassess undervalued or omitted property. Here, the Petitioner had an opportunity for a comprehensive review of its assessment at hearings before both the PTABOA and the Board. Additionally, the Form 130 document filed by the Petitioner to initiate its appeal to the PTABOA states "[a]s a result of filing this petition, the assessment may increase, may decrease, or may remain the same." *Board Exhibit A*. The Form 131 petition to the Board contains identical language. *Id*. The power of attorney signed by the Petitioner states, in relevant part, "I am aware of and accept the possibility that the property value may increase as a result of filing an administrative appeal with the Property Tax Assessment Board of Appeals…." *Id*. Certified tax representatives are also required to advise their clients specifically "that the property value may increase as a result of filing an administrative appeal with the [Indiana] board." 52 IAC 1-2-2. The Petitioner's contention that the assessment cannot increase as a result of the appeal process lacks merit. The Petitioner failed to establish any violation of due process requirements.

n) When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified,* 799 N.E.2d at 1221-1222; *Whitley Products,* 704 N.E.2d at 1119.

Conclusion

15. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment should not be changed.

ISSUED: October 25, 2007

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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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>