

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

**Petition:** 53-009-19-1-4-01037-19  
**Petitioner:** Mac's Convenience Store-1115 South Walnut Street  
**Respondent:** Monroe County Assessor  
**Parcel:** 53-08-04-302-052.000-009  
**Assessment Year:** 2019

The Indiana Board of Tax Review "Board" issues this finding and determination, concluding as follows:

**PROCEDURAL HISTORY**

1. Mac's Convenience Store ("Mac's") contested the 2019 property tax assessment of a convenience store and gas station located at 1115 South Walnut Street in Bloomington. The Monroe County Property Tax Assessment Board of Appeals ("PTABOA") valued the property at \$585,200 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 official record for this matter contains the following:
  - 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
  - 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—1109 S. Walnut St.
  - Petitioner's Ex. R-1: Additional pages from County Land Order

Respondent's Ex. A: Property Record Card for Mac's Convenience Store  
Respondent's Ex. B: Photo of Subject Property  
Respondent's Ex C: Aerial View of Subject & Other Properties at Intersection and supporting documents  
Respondent's Ex. D: 2016 Sales Disclosure Form for Subject  
Respondent's Ex. E: *Kooshtard Property VIII v. Shelby County Assessor*, 987 N.E.2d 1178 (Ind Tax Ct. 2013)  
Respondent's Ex. F: *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006)  
Respondent's Ex. G: *Fleetwood v. Monroe County Assessor* (IBTR Jan. 16, 2014)  
Respondent's Ex. H: Aerial View Property and Surrounding Streets  
Respondent's Ex. I: Property Record Card—1604 S. Walnut St.  
Respondent's Ex. J: Exterior Photo of Mac's Convenience Store—2019

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 Exs. 3 and R-1, arguing that they related to a new issue Mac's did not raise in its initial appeal with the Board. She claimed that the Board's small claims rules precluded Mac's from raising new issues 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 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 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. In this appeal, the assessment did not change from 2018 to 2019. Mac’s accepted the burden of proof. We agree that the burden lies with Mac’s.

#### SUMMARY OF CONTENTIONS

9. **Mac’s Contentions:**

- a. Mac’s contended that the Assessor incorrectly valued the subject property by applying a 125% influence factor to the land base rate. This made the land rate exceed the rate of the county land order, thus making the county land order meaningless according to Mac’s. *Smith testimony; Pet’r. Ex. 2.*
- b. In addition, Mac’s claimed that the subject property’s 125% influence factor was unfair and not uniform because the Assessor applied a 0% influence factor to other properties at the same intersection. *Smith testimony; Pet’r. Exs. 1-8.*

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; Resp’t. Ex. F.*
- b. Ken Surface, Senior Vice President for Nexus Group, also explained that the Assessor applied the same land base rate to the comparison properties Mac’s submitted as evidence as she did to the subject. He testified that the subject received a 125% positive influence factor because the convenience store is located on one of the busiest corners in Bloomington with high traffic levels. He also 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, C-1, C-2, C-3.*
- c. Finally, Surface testified that the 2016 sales disclosure form provides further evidence that the assessment is not too high because Mac’s purchased the subject and a neighboring parcel for \$725,000 while the combined assessment is only \$525,200. *Surface testimony; Resp’t. Ex. D.*

## 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 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 appeal, Mac's 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 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 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)). 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

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 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>>.