

Bigfoot Spotted *in* Wisconsin

by: John Temple

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On November 12, 2006 the national news lines picked up a story by Mike Miller from WISN in Wisconsin that a local man reported seeing Bigfoot along a rural highway. I remember as a kid hearing stories like this while camping in Oregon. I have spent years hiking, camping and hunting throughout the northwest and, unfortunately, I've never had the opportunity to see Bigfoot.

There is currently a debate within the TIC industry that there are investors who exist that are experienced, hands-on real estate investors who want to maintain personal control over their real estate; yet are willing to invest with 34 total strangers in a property that most have never seen. Like Bigfoot, I cannot say these investors do not exist; it is just that I've never found one. I've been in the financial arena for 30 years, have spoken to thousands of investors and have done over 400 TIC transactions, yet I have never found this elusive client. Not that they might not exist.

Why would anyone care?

Again, comparing it with Bigfoot, if you happen to be hunting without a license and accidentally shoot someone who looks like Bigfoot but is not Bigfoot, then you have a good chance of going to prison. Similarly, in the TIC arena, that same thing happens to brokers who happen to shoot the wrong target. This is not only a problem if you are the broker, but it is a really bad day for the poor soul who gets shot. So if you are a broker or an investor looking at TICs (i.e. the one taking a hike in the woods during hunting season), then listen up because the following might save your life.

The debate is really around the question of whether or not TIC investors are passive and form reliance upon the issuer. On the Bigfoot side of the argument,

they will argue that co-owners are not passive and do not rely upon the efforts of others. They will argue that it is purely a "buyer beware" transaction. They will argue that if TIC investors could positively affirm the following 3 statements, then they would sufficiently pass the Bigfoot test.

- The co-owners choose the property manager.
- The property manager is not the sponsor or its affiliate.
- The co-owners are actively involved in the management of the property, including regular meetings to discuss how the property is performing.

I, however, would encourage you to ask a couple more questions before you shoot.

- Assume you are an investor who just sold a duplex next door and want to invest in a \$35 million dollar, 200,000 square foot office building, 2000 miles away.

Questions:

How many office buildings have you bought and sold like this before?

Did you personally visit the property?

- Assume you are an investor who just sold a family ranch in Montana and want to invest into a 200 unit apartment building in Atlanta.

Question:

Assuming you are using a property manager, how many property managers have you hired before to manage properties of this size in Atlanta?

- Assume you are a Doctor in California and invest into a 20-story office building in downtown Cincinnati.

Question:

Do you know what the Cap Rate is and can you

tell what the price of the property would be if the Cap Rate on exit is 200 basis points higher than it is today?

I just asked a simple asset management question, a property management question and a normal real estate question. If the answer to any of these is "no" or "none" then there is a really good chance the investor is going to have to rely on the efforts of others and would be considered a passive investor. The point to all of this is that even though a client might say "yes" to the first 3 questions, if they answer "no" to the last 3 questions, this is just a normal everyday investor looking for a safe way to invest their 1031 exchange money and prepare for retirement. Please, if you are a broker, don't shoot. This is not Bigfoot. If the answer to the last 3 questions is "no", then the client is passive and is forming a reliance upon the efforts of others. If this is the case then you have to be securities licensed and the sponsor has to comply with all the rules and regulations of a reg. D private placement. There is no other way of doing it legally.

For brokers still sitting on the fence, here are a couple more points to consider. The legal eagles

promoting the existence of Bigfoot are basing their hunting licenses on Federal law. Please do not stop there, ask them if their legal opinion will satisfy State laws. To my knowledge, they do not. Ask them if their legal opinion covers passive investors who arguably are looking to you for guidance and probably do not know what asset management means. In a not so dissimilar case, Colorado just sentenced a TIC broker to 96 years in prison for not getting it right.

The TIC market *can* be a safe place for investors to invest. However, if you are an investor, do not get caught in the cross hairs of a real estate broker who is not securities licensed. If you are a real estate broker, Bigfoot might exist but do not take the risk, it is not worth it. Get licensed, it is not complicated. Do not take short cuts that will only get you in trouble. You can bet the attorney is not going to prison, the Sponsor will just hide behind client signatures; but if you are the broker, you are in real trouble. You are the one who is supposed to know the client. Please get this "passive and reliant" issue figured out before you make recommendations. Leave the question of whether or not Bigfoot exists to someone else.



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1031PropertyWatch is one of the largest brokers for Tenant-in-Common (TIC) replacement properties in the country. 1031PropertyWatch has been a branch office of OMNI Brokerage, Inc. since OMNI entered the TIC industry in 2001. Our mission is to make life easier for our clients by helping them find replacement properties that take the headache out of owning real estate while still providing an income stream.

First real estate licensed in 1976, John Temple, Founder

& President of 1031PropertyWatch, began working in the TIC industry in 1999 after recognizing the benefits that TIC investments could provide his clients. John entered the TIC market when it was in its infancy and he is considered "one of the grandfathers of the industry," by Tim Snodgrass, former President of the Tenant-in-Common Association (TICA). Over the past nine years, 1031PropertyWatch has helped investors successfully close over 400 TIC transactions, representing more than \$360 million in investment grade real estate.

Over the years 1031PropertyWatch has developed into a close-knit team with the goal of bringing a national and complex market to a personable and understandable level. With multiple brokers, analysts, and investor services/closing specialists, we are uniquely qualified to help clients throughout the entire process of identifying, buying and closing replacement properties.