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

Petition No.: **31-007-22-1-4-00779-22**
Petitioner: **Jerry W. Cook**
Respondent: **Harrison County Assessor**
Parcel: **31-09-25-126-012.000-007**
Assessment Year: **2022**

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

Procedural History

1. Jerry Cook ("Petitioner") contested the 2022 assessment of his real property located at 1855 Gardner Lane, Corydon, Indiana, 47110 on May 10, 2022. The Harrison County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 determination valuing the property at:

   Land: $184,100 Improvements: $147,300 Total: $331,400

2. Cook timely appealed to the Board, electing to proceed under the small claims procedures. On April 11, 2023, Natasha Marie Ivancevich, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the subject property.

3. Jerry Cook appeared *pro se*. Ayn Engle appeared as counsel for the Harrison County Assessor. Jerry Cook and Ken Surface, a consultant for the Assessor, testified under oath.

Record

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

   a) Exhibits:

Petitioner Ex. 1:	Sketch Addendum
Petitioner Ex. 2:	Plat Map
Respondent Ex. A:	Property Record Card
Respondent Ex. B:	Imagery of Subject Property
Respondent Ex. C:	Aerial Map and Parcel Listing
Respondent Ex. D:	Property Record Card 31-09-25-123-014.000-007

Respondent Ex. E:	Property Record Card 31-09-25-126-006.000-007
Respondent Ex. F:	Property Record Card 31-09-25-126-007.000-007
Respondent Ex. G:	Property Record Card 31-09-25-126-008.000-007
Respondent Ex. H	Property Record Card 31-09-25-126-004.000-007
Respondent Ex. I:	Property Record Card 31-09-25-126-005.000-007
Respondent Ex. J:	Property Record Card 31-09-25-126-009.000-007
Respondent Ex. K:	Property Record Card 31-09-25-126-011.000-007
Respondent Ex. L:	Property Record Card 31-09-25-126-008.000-007
Respondent Ex. M:	Property Record Card 31-09-25-126-013.000-007

b) 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.

Objections

5. The Assessor objected to the admission of Petitioner's Exs. 1 and 2, the Sketch Addendum and Plat Map, on the grounds that they were not exchanged. Cook testified that he previously presented the exhibits to the Assessor's consultant, Ken Surface. The Assessor did not assert any specific prejudice. We do not find that these circumstances warrant the extraordinary sanction of exclusion. Thus, we overrule the objection and admit the exhibits.

Findings of Fact

6. The subject property contains a commercial office building that is rented to the USDA Service Center. The building is situated on a 2.63 acre lot located in Corydon, Indiana. It has 57 feet of road frontage. *Resp't Ex. A; Cook testimony; Surface testimony.*

Contentions

7. Summary of the Petitioner's case:

a) The Petitioner argued the subject property is over-assessed because it has very little street frontage which reduces its utility. He also pointed to deficiencies in the property such a sinkholes and wooded areas. In addition, he argued that other nearby properties were assessed at lower land values despite having more frontage and utility. *Cook testimony.*

8. Summary of the Respondent's case:

a) Ken Surface, a level III certified assessor-appraiser, testified that the subject property, and other properties in the neighborhood, were correctly and uniformly assessed according to the guidelines. *Surface testimony.*

Burden of Proof

9. Generally, the taxpayer has the burden of proof when appealing a property tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." I.C. § 6-1.1-15-20(a) (effective March 21, 2022).

10. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." Id.

11. If the burden of proof shifts, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

12. Here, the current assessment of $331,400 was an increase of more than 5% over the previous assessment of $304,700. Thus, the Assessor has the burden of proof.

13. The Assessor argued that the Petitioner should have the burden of proof as to all issues, citing *Thorsness v. Porter Cty. Ass'r*, 3 N.E.3d 49 (Ind. Tax Ct. 2014). The Petitioner in that case only challenged the uniformity and equality of the assessment. In this case, the Petitioner has also challenged the assessment overall. The Assessor is not relieved from the burden of presenting probative, market-based evidence for the value of the subject property simply because a party also challenges the uniformity and equality of the assessment.

Analysis

14. Neither party presented probative evidence of the market value-in-use of the subject property.

    a) The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before it." I.C. § 6-1.1-15-20(f). The Board's conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." Id. Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).

    b) In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the value of the property. *Piotrowski v. Shelby Cty. Assessor*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (*citing Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types,

neither the taxpayer nor the assessor may rely on the mass appraisal "methodology" of the "assessment regulations." *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the "formalistic application of the Guidelines' procedures and schedules" lacks the market-based evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.

c) Market-based evidence may include "sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles." *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that "another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence." *Marinov v. Tippecanoe Cty. Assessor*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property's value as of the valuation date. *O'Donnell v. Dept. of Local Gov't. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).

d) We first examine the Assessor's evidence. Ken Surface, the consultant for the Assessor, testified about how the assessment was developed. But simply explaining the methodology used to develop the original assessment is insufficient. Rather, the Assessor needed to present probative, market-based evidence of the value of the subject property compiled according to generally accepted appraisal principles. *Long* at 471. Because she failed to do that, we find the Assessor has not made a prima facie case for the value of the subject property.

e) The Petitioner likewise failed to support any specific value. Although he testified to several deficiencies in the subject property, including a lack of frontage, sink holes, and wooded areas, he did nothing to quantify the effect those deficiencies had on value. To a large extent, the Petitioner's argument amounts to an attack on the methodology used to develop the assessment. But this is insufficient. Instead, as discussed above, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). He did compare the subject property's assessment to the assessments of other nearby properties. But he did not provide any market-based evidence quantifying how the relevant differences between those purportedly comparable properties and the subject property affected their respective values. For these reasons, we find the Petitioner has failed to make a case supporting any value for the subject property.

f) Because there is no evidence in the record sufficient to support any value, the prior year's assessment is presumed correct under I.C. § 6-1.1-15-20. But this does not end our inquiry, as it appears the Petitioner is also challenging the uniformity and equality of the assessment. 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. Assessor,* 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. *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. *Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Cty. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

g) When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness* at 52 (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1040 (Ind. 1998).

h) As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. The Petitioner did not provide any market data for any of the other properties he referenced, nor did he show that it was a statistically reliable sample of properties. For this reason, he failed to make a prima facie case showing a lack of uniformity and equality in the assessment.

i) Because the subject property's assessment increased by more than 5% over the prior year's assessment, and none of the exceptions apply, the current assessment is not presumed correct according to I.C. § 6-1.1-15-20. In addition, the totality of the evidence is insufficient to support any value. Thus, the prior year's assessment is presumed correct.

Final Determination

15. Because the totality of the evidence is insufficient to support any value, the prior year's assessment is presumed correct under I.C. § 6-1.1-15-20. Thus, we order the assessment reduced to the prior year's value of $304,700.

ISSUED: JULY 10, 2023

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>.