

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

**Petition:** 53-005-19-1-4-01036-19  
**Petitioner:** 17<sup>th</sup> Street Plaza  
**Respondent:** Monroe County Assessor  
**Parcel:** 53-05-33-200-037.000-005  
**Assessment Year:** 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. The 17<sup>th</sup> Street Plaza (“Plaza”) contested the 2019 property tax assessment of a convenience store/gas station located at 201 West 17<sup>th</sup> Street in Bloomington. The Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) valued the property at \$464,800 for 2019. The Plaza timely appealed to the Board.
2. The Board’s appointed Administrative Law Judge, Jennifer Thuma (“ALJ”), heard the case telephonically on July 8, 2020. Neither she nor the Board inspected the property.
3. Milo Smith, Certified Tax Representative, represented the Plaza. 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 parties submitted the following exhibits:
  - Petitioner’s Ex. 1: Real Property Assessment Guidelines (page 65)
  - Petitioner’s Ex. 2: GIS photo of Subject Property
  - Petitioner’s Ex. 3: List of Comparison Properties
  - Petitioner’s Ex. 4: Property Record Card for 17<sup>th</sup> Street Plaza
  - Petitioner’s Ex. 5: Property Record Card—203 West 17<sup>th</sup> Street
  - Petitioner’s Ex. 6: Property Record Card-1328 Woodburn Avenue
  - Petitioner’s Ex. 7: Property Record Card-214 West 17<sup>th</sup> Street
  - Petitioner’s Ex. 8: Printed sheet from Elevate
  - Petitioner’s Ex. 9: Email about GIS from Denise Danowski
  - Petitioner’s Ex. 10: Contact information for GIS Consulting
  - Petitioner’s Ex. 11: Indiana Code § 6-1.1-4-14
  - Petitioner’s Ex. R-1: Land Order for Monroe County
  - Petitioner’s Ex. R-2: Residential Property Record Cards

- Respondent's Ex. A: Property Record Card for 17<sup>th</sup> Street Plaza
- Respondent's Ex. B: Photo of Subject Property
- Respondent's Ex. C: Map of area near the subject with supporting property record cards
- Respondent's Ex. D: Map of 17<sup>th</sup> Street parcels with supporting documents
- Respondent's Ex. E: Plat Map
- Respondent's Ex. F: *Fleetwood v. Monroe County Assessor* (IBTR Jan. 16, 2014)
- Respondent's Ex. G: GIS Disclaimer

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 the Plaza's argument that the parcel contains a right-of-way which should not be subject to tax. The Assessor contended that the argument should not be allowed because the Plaza did not include this issue when it filed the appeal with the Board, citing the Board's repealed administrative rule 52 IAC 3-1-2 which was in place when the taxpayer filed the appeal, and current 52 IAC 4-5-4. The Assessor also objected to the Plaza's Exhibits 8, 9 and 10 on that basis. While 52 IAC 4-5-4 prevents a party from amending its Form 131 without leaving the small claims docket, this does not prevent the Plaza from making these arguments. The Plaza 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 Exs. R-1 and R-2 on the grounds that they were 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. The Plaza accepted the burden of proof. We agree.

#### SUMMARY OF CONTENTIONS

9. **The Plaza's:**

- a. The Plaza argued that the cost approach the Assessor used to value the property was incorrect because it applied a 100% influence factor to the subject property resulting in a land rate double that of the maximum land rate established in the county's land order. *Smith testimony; Pet'r Ex. 1.*
- b. In addition, the Plaza argued that the Assessor did not uniformly apply influence factors across the neighborhood because some nearby properties have no influence factors. In support of this, the Plaza pointed to property record cards for several parcels located near the subject property. *Smith testimony; Pet'r. Ex. 3, 4, 5, 6, 7.*
- c. Finally, the Plaza argued that the Assessor was impermissibly taxing the right of way because a GIS report shows that the parcel's total area is .528 acres with an adjusted acreage of .50 and a right of way of .173 acres. The Plaza also pointed out that Ind. Code § 6-1.1-4-14 requires the Assessor to obtain a survey if property lines are in dispute, but the Assessor did not. The Plaza asked the Board to order the Assessor to have the property surveyed. *Smith testimony; Pet'r Ex. 8, 9, 10.*

10. **The Assessor's:**

- a. The Assessor contended that the Plaza did not meet its burden of proof to demonstrate that the assessment is incorrect because it only contested the methodology used by the Assessor but did not provide its own independent evidence. In addition, Ken Surface testified that the subject property's influence factor was both permissible and correct under the Indiana Assessment Guidelines. He also pointed to several nearby properties that also received influence factors. *Surface testimony; Resp't. Ex. C.*
- b. Regarding the right of way, Surface testified that the GIS system is not the legal record of property boundary lines or total acreage. Instead, the assessed acreage was determined from the plat that is legally recorded. That plat shows .5 acres. *Surface testimony; Resp't. Ex. E.*

## ANALYSIS

11. The Plaza 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); I.C. § 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 USPAP- market-value-in-use appraisal (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*, 841 N.E. 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 used to calculate an assessment or strictly applying the assessment guidelines normally does meet a taxpayer's burden of proof. See *Eckerling*, 841 N.E.2d at 678. A party must 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, the Plaza admitted it was attacking the methodology used by the Assessor in applying the influence factor to the subject property. As discussed above, this is insufficient. Instead, a taxpayer must provide its own market-based evidence of value, which the Plaza did not do.
  - e. Finally, to the extent the Plaza argued that it did not receive a uniform and equal assessment because other, purportedly comparable properties did not receive an influence factor 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)). The Plaza failed to demonstrate that it used generally accepted standards or provided a statistically reliable sample. Thus, this argument fails.

- f. We now turn to the Plaza's argument that the Assessor improperly assessed the right of way. The Plaza is correct that a right of way should not be assessed. But it failed to demonstrate that the subject property's right of way was included in the assessment. As Surface testified, the GIS system is not the legal standard for assessment. In addition, the GIS records themselves show an adjusted acreage of .5, exactly what was being assessed.
- g. Finally, we address the Plaza's request that the Board order the Assessor to survey the subject property. Ind. Code § 6-1.1-4-14(c) provides that if an assessor and landowner "fail to agree on the amount of land...the assessor shall have the county surveyor make a survey to determine the amount of land so described." It is troubling that the Assessor failed to comply with this statute. Nevertheless, this failure does not warrant any relief. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (In. Tax Ct. 1999)). No statute gives us the authority to order the Assessor to comply with this statute. Instead, the Plaza should seek a mandamus action in a court of general jurisdiction.
- h. Because the Plaza 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>>.