

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

**Petition No.:** 45-004-17-1-5-00092-21  
**Petitioner:** DAY Investments LLC  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-08-129-016.000-004  
**Assessment Year:** 2017

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

**Procedural History**

1. On May 29, 2018, DAY Investments LLC (“DAY”) appealed the 2017 assessment of its property located at 2436-38 West 9<sup>th</sup> Place in Gary.
2. On December 10, 2020, after holding a hearing, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 valuing the vacant land at \$1,600.
3. DAY appealed to the Board on January 25, 2021, electing to proceed under the small claims procedures.
4. On December 19, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. Andy Young, Manager, appeared for DAY. Matthew Ingram, Lake County Assessment Coordinator, appeared for the Assessor. Both testified under oath.
6. DAY did not offer any exhibits.
7. The Assessor did not offer any exhibits.<sup>1</sup>
8. The official record includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; (3) a digital recording of the hearing; and (4) the audio recordings of the hearings for IBTR Petition Nos. 45-003-

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<sup>1</sup> The Assessor submitted Respondent Exhibits 1, 2, 3, 4 and 5, but did not offer them into evidence.

17-1-5-00088-21, 45-004-17-1-5-00089-21, 45-004-17-1-5-00090-21, and 45-004-17-1-5-00091-21.<sup>2</sup>

### **Findings of Fact**

9. The subject property is a vacant lot located in Gary. *Young testimony; Ingram testimony.*
10. The 2017 assessment under appeal of \$1,600 is identical to the prior year's assessment. *Young testimony; Ingram testimony.*

### **Contentions**

11. Summary of the Petitioner's case:
  - a) DAY argued that because the subject property is landlocked and inaccessible, it should receive more than a 50% negative influence factor. *Young testimony.*
  - b) DAY also claimed that in St. John Township lots similar to the subject have been assessed at \$100 for 20 years. DAY claimed this demonstrates non-uniformity between townships in Lake County. In addition, DAY argued land base rates were not uniformly applied in the subject neighborhood or the neighboring area *Young testimony.*
  - c) DAY argued that the land order should be void because there were not sufficient sales, it was not submitted to the PTABOA until 2018, and Calumet Township set the base rates rather than the Assessor. In addition, DAY argued that the land rates are "meaningless" and do not reflect market conditions because a report developed by Indiana University Northwest found vacant lots in Gary to be virtually unsellable with no value. *Young testimony.*
  - d) Finally, DAY argued that the Assessor, Calumet Township, and the PTABOA act in a biased and unethical manner. DAY referenced several alleged conflicts of interest between those entities as well as a vendor of the Assessor. *Young testimony.*
12. Summary of the Respondent's case:
  - a) The Assessor argued that influence factors were uniformly applied to the subject property and other like properties in Calumet Township. *Ingram testimony.*
  - b) In addition, the Assessor argued that the county's land orders and neighborhood delineations were developed in accordance with the guidelines set forth by the Department of Local Government Finance ("DLGF"). *Ingram testimony.*

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<sup>2</sup> These hearings occurred earlier in the same day. The parties agreed to incorporate testimony and arguments from those hearings into this hearing.

- c) Finally, the Assessor argued that DAY presented no market-based evidence that would support a reduction in the assessment. The Assessor requested no change in the assessment. *Ingram testimony*.

### Burden of Proof

13. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. I.C. § 6-1.1-15-17.2<sup>3</sup> 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 or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2 (b) and (d).
14. If the assessor has the initial burden to prove the original assessment was correct and fails to meet it, the burden shifts to the taxpayer to prove the correct assessment. If neither party meets its burden, the assessment reverts to the prior year's level. I.C. § 6-1.1-15-17.2 (b); *Southlake Ind., LLC v. Lake County Assessor*, 174 N.E.3d 177, 179 (Ind. 2021). Furthermore, the statutory term "correct assessment" referenced in I.C. § 6-1.1-15-17.2 refers to "an accurate, exact, precise assessment." *Southlake Ind., LLC v. Lake County Assessor*, 181 N.E.3d 484, 489 (Ind. Tax Ct. 2021). Thus, to meet the burden under I.C. § 6-1.1-15-17.2, an assessor must provide probative, market-based evidence that the assessment is "*exactly and precisely*" correct. *Id.* (emphasis in original).
15. Here, the parties agree the assessment under appeal is identical to the prior year's assessment. Thus, DAY has the burden of proof.

### Analysis

16. DAY failed to make a prima facie case for reducing the property's 2017 assessment.
- a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.<sup>4</sup> The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
- b) Real property is assessed based on its true tax value. I.C. § 6-1.1-31-5. True tax value does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the DLGF's rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as "market value-

<sup>3</sup> I.C. § 6-1.1-15-17.2 was repealed by P.L. 174-2022 on March 21, 2022. In *Elkhart Cty. Assessor v. Lexington Square, LLC*, 219 N.E.3d 236 (Ind. Tax Ct. 2023) the Tax Court held that I.C. § 6-1.1-15-17.2 continues to apply to appeals filed before that date.

<sup>4</sup> The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2.

- c) 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.
- d) 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). For the 2017 assessment, the valuation date was January 1, 2017. I.C. § 6-1.1-2-1.5.
- e) Here, DAY had the burden of proof. It primarily argued that the assessment was flawed because of alleged issues with how the land order and base rates were developed. But Day offered no reliable evidence to support its claims, nor did cite to any legal authority supporting its contention that the land order should be considered “void.” Finally, we note that DAY’s representative, Andy Young, has already litigated similar claims regarding the same land order in *Young v. Dep’t of Loc. Gov’t Fin.*, 237 N.E.3d 1175 (Ind. Tax Ct. 2024). In that case, the Court found no merit to Young’s claims. For these reasons, we find that DAY has not demonstrated it is entitled to any relief on these grounds.
- f) DAY also argued that subject property should have received a larger negative influence factor. But a taxpayer challenging an assessment generally cannot meet its burden simply by contesting the methodology used to compute the assessment. Instead, parties must offer market-based evidence that complies with generally accepted appraisal principles to show the property’s market value-in-use. *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Here, DAY did not offer any reliable, market-based evidence that supported any specific value for the subject property.
- g) DAY also argued that it was not receiving a uniform and equal assessment as compared to other properties. 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. *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 Ct. 2001) (citing *Southern Bell Tel. and Tel Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

- h) 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 the jurisdiction.” *Thorsness v. Porter County Ass’r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (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) f 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).
- i) 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. But DAY did not provide any reliable market data for either the subject property or any purportedly comparable properties. For this reason, DAY failed to make a case showing a lack of uniformity and equality in the assessment.
- j) Finally, DAY made several allegations about conflicts of interest related to the Assessor and other related entities. But DAY failed to cite any authority showing why these claims, even if true, would entitle it to any change in its assessment. The Board’s hearings are *de novo*. Thus, the remedy available to DAY was to present market-based evidence supporting a different value for the subject property, but it failed to do so.
- k) The Assessor did not request a different assessment or present any evidence of value.

### **Final Determination**

- 17. In accordance with the above findings and conclusions, the Board orders no change to the 2017 assessment.

ISSUED: March 19, 2025

Jonathan R. Ellis  
Chairman, Indiana Board of Tax Review

Patsy J. Brand  
Commissioner, Indiana Board of Tax Review

Timothy J. White  
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>.