REPRESENTATIVE FOR PETITIONER: Robert Metz, Hearing Officer

REPRESENTATIVE FOR RESPONDENT: John P. Reed, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Lake County Assessor,	)	Petition No.: 45-023-18-1-4-00514-20
	)	
Petitioner,	)	Parcel No.: 45-07-17-402-004.000-023
	)	
v.	)	
	)	County: Lake
Plaza Hammond, LLC,	)	
	)	
Respondent.	)	Assessment Year: 2018

Appeal from the Final Determination of the
Lake County Property Tax Assessment Board of Appeals

June 13, 2022

FINAL DETERMINATION

The Indiana Board of Tax Review, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Conclusions of Law

Introduction

1. The Lake County Assessor filed an appeal seeking to increase the assessment of Plaza Hammond LLC's property based on an appraisal. Because the Assessor cannot meet her burden and Plaza did not offer any probative evidence to prove that its proffered assessment was correct, the assessment must revert to the previous year's level.

Procedural History

2. Plaza filed a Form 130 petition contesting the 2018 assessment of its multi-tenant commercial property located at 7843 Indianapolis Boulevard in Hammond. On July 22, 2020, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued a determination lowering the assessment from $2,550,000 to $1,675,000 ($645,800 for land and $1,029,200 for improvements). The Assessor disagreed with the PTABOA's determination and filed a Form 131 petition with the Board.

3. On December 13, 2021, our designated administrative law judge, Joseph Stanford ("ALJ"), held a telephonic hearing on the Assessor's petition. Neither he nor the Board inspected the property.

4. Robert Metz, hearing officer for the Lake County Assessor's office, testified under oath.

5. The Assessor submitted the following exhibits:

Petitioner Exhibit A:[1]	Appraisal report prepared by David R. Melton, and Andrew Sharmat.

6. Plaza submitted the following exhibits:

Respondent Exhibit 1:	Valuation Detailed Report published by CoreLogic,
Respondent Exhibit 2:	Spreadsheet containing square-foot value computations,
Respondent Exhibit 3:	Form 115 determination and Form 17T,
Respondent Exhibit 4:	Aerial photograph showing the subject property and the surrounding area.

7. The record also includes the following: (1) all petitions or other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

[1] The Assessor listed the appraisal on her exhibit coversheet as "Exhibit #1," but he offered it as Exhibit A. We therefore refer to the appraisal as Petitioner Exhibit A.

Parties' Contentions

A. The Assessor's Contentions

8. The Assessor disagreed with the PTABOA's assessment determination and hired David R. Melton and Andrew Sharmat of Martinez, Sharmat, & Associates to appraise the property. Melton and Sharmat applied two generally accepted appraisal methodologies—the sales-comparison and income approaches—to estimate the market value of the fee simple interest in the property at $2.1 million. They certified that their appraisal complies with the Uniform Standards of Professional Appraisal Practice ("USPAP") and that the report "[c]omplies with (their) best understanding of State of Indiana & Lake County Assessor reporting requirements." *Metz testimony; Pet'r Ex. A at 1, 4, 9, 55.*

9. According to the Assessor, Plaza's argument that the subject property was not assessed fairly compared to the assessments for three nearby properties requires the "extraordinary assumption" that those other properties were correctly assessed. The truth could be the opposite: that the subject property's assessment was correct and that the other assessments were wrong. In any case, Plaza's value computation is just raw numbers with no adjustments. Melton's and Sharmat's appraisal should therefore carry more weight. *Metz argument; Pet'r Exs. 2, 4.*

B. Plaza's Contentions

10. According to Plaza, the subject property was not assessed fairly and equally compared to other properties in the area. To illustrate that point, Plaza offered a spreadsheet that purports to contain assessment information for the subject property and three nearby properties. Plaza's attorney, who did not swear-in as a witness, apparently prepared the spreadsheet. Plaza did not offer any independent evidence to verify the data reflected in the spreadsheet. *See Resp't Ex. 2.*

11. According to the spreadsheet, the subject improvements were originally assessed at $1,904,200, which translates to $376.03 per square foot. By comparison, three nearby buildings with "similar character" as the subject property but ranging in size from 2,584 to 24,000 square feet were assessed between $92.55/sq. ft. and $163.97/sq. ft. The land assessments for the three properties ranged from $237,511/acre to $826,017/acre, while the subject land was assessed for $808,260.33/acre. If the average unit values for the other three buildings and land parcels were used to assess the subject property, its overall assessment would be $1,074,817.21. If the average unit values for the properties with the two smallest buildings were used, the subject property's overall assessment would be $1,283,003.57. *Reed argument; Resp't Exs. 2, 4.*

12. Plaza also offered a valuation report published by CoreLogic, which appears to have been prepared for insurance purposes. The report indicates that the building's reconstruction cost was $192/sq. ft. as of January 6, 2020. Metz acknowledged that construction costs for residential property had increased over the last 12 to 18 months, but he could not say whether construction costs for commercial property had increased during that period. Based on the building's 5,064 square feet, the total reconstruction cost indicated by the report is $972,288. Adding that to the $645,800 assessed land value yields a total value of $1,618,088. While the CoreLogic reconstruction costs are higher than unit values for surrounding properties, an assessment using those costs is close to the PTABOA's assessment determination, and Plaza "could live with" that value. *Reed argument; Metz testimony; Resp't Exs. 1, 3.*

13. As for Melton's and Sharmat's appraisal, their definition of market value does not exactly track the definitions of market value or market value-in-use from the Department of Local Government Finance's assessment manual. Plaza also asserts that no retail properties in Hammond have sold for $376 per square foot, although it did not offer any evidence to support that claim. Plaza therefore believes that we should give more weight to its spreadsheet and the CoreLogic report than to Melton's and Sharmat's appraisal. *Reed argument.*

Analysis

14. Absent statutory direction to the contrary, a party who brings an appeal, and therefore seeks to change the status quo, has the burden of proof. Normally, that entails proving that the assessment under appeal is incorrect and what the correct assessment should be. When we held our hearing, various statutes imposed more specific provisions regarding the burden of proof under narrowly defined circumstances. For example, Ind. Code § 6-1.1-15-17.2 (commonly known as "the burden-shifting statute") provided that an assessor had the burden of proving the assessment was "correct" where, among other things, the assessment under appeal represented an increase of more than 5% over the prior year's assessment. I.C. § 6-1.1-15-17.2(a)-(b). As interpreted by the Tax Court, an assessor could meet its burden under that statute only by showing that the property's market value-in-use exactly matched the assessment under appeal. *Southlake Ind., LLC v. Lake Cty. Ass'r ("Southlake II")*, 181 N.E.3d 484, 490 (Ind. Tax. Ct. 2021). Where an assessor failed to meet her burden, the taxpayer could introduce evidence to prove the correct assessment. If neither party met their burden, the assessment reverted to the previous year's level. I.C. § 6-1.1-15-17.2(b).

15. The Legislature repealed the burden-shifting statute, Ind. Code § 6-1.1-15-17.2, on March 21, 2022. P.L. 174-2022 § 32 (repeal effective on passage). Both the burden-shifting statute and its repeal dealt with a procedural question: how the parties must go about making their respective cases. Under those circumstances, we must apply the law that was in effect at the time of the procedural event covered by the statute and its repeal. And that procedural event was our hearing. A hearing is the point at which the parties can tailor their evidentiary presentations to address the burden of proof. Once the hearing has concluded, it is too late. Because the hearing on these appeals occurred before the Legislature repealed the burden-shifting statute, that statute governs who has the burden of proof if its terms otherwise apply. *See Love v. State*, 286 So.3d 177, 187-88, 190 (Fla. 2019) (explaining that the "'commonsense' application of a new procedure generally 'depends on the posture of the particular case'" and holding that a statute changing the burden of proof at an immunity hearing applied to hearings held after the statute's

effective date) (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 275 n. 29, 114 S.Ct. 1483, 128 L. Ed. 2d 229 (1994).

16. Both the original assessment and the subsequent PTABOA determination for 2018 represented an increase of more than 5% over the property's 2017 assessment.[2] As the burden-shifting statute contains no language limiting its application to only those appeals brought by taxpayers, it applies to this appeal and the Assessor had the burden of proving that the assessment was correct.

17. Given that the appraisal offered by the Assessor estimated the market value of the fee simple interest in the property at $2.1 million, the Assessor failed to meet her burden because her valuation evidence did not "*exactly* and *precisely*" conclude to the value determined by the PTABOA. *See Southlake II,* 184 N.E.2d at 489 (holding that the Lake County Assessor failed to meet her burden of proof because her evidence did not "*exactly* and *precisely* conclude to the assessments she originally assigned to the Mall.") (emphasis in original). We recognized that the interpretation of the statute in Southlake I and II renders the Assessor's statutory right to appeal meaningless. But we are bound to follow these cases.

18. Our finding that the Assessor failed to meet her burden does not, by itself, resolve this appeal, however. We must next address whether Plaza met its burden of proving the correct assessment. Otherwise, the assessment will revert to the previous year's level.

19. Plaza offered two pieces of evidence: a spreadsheet with assessment information for the subject property and three nearby properties, and the CoreLogic report. Plaza's counsel, who did not swear-in as a witness, apparently prepared the spreadsheet. And Plaza offered nothing to show where the underlying data came from.

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[2] Nobody offered evidence showing property's 2017 assessment. However, the Form 131 petition lists the prior year's assessment as $1,514,800 ($645,800 for land and $869,000 for improvements). The original 2018 assessment was $2,550,000, and the PTABOA's determination for 2018 was $1,675,000. These figures represent an increase of approximately 68.3% and 10.6% over the property's 2017 assessment, respectively.

20. Even if we were to accept the data at face value, Plaza did nothing to compare the properties from its spreadsheet to the subject property beyond their relative locations and sizes. The only evidence of any further comparison was Metz's testimony on cross-examination that one of the properties was similar in character to the subject property. That limited comparison does not meet generally accepted appraisal or assessment practices. *See Long v. Wayne Twp. Ass'r,* 821 N.E. 2d 466, 470-71 (Ind. Tax Ct. 2005) (finding that sales data lacked probative value where taxpayers did not explain how purportedly comparable properties compared to the property under appeal or how relevant differences affected value).

21. The CoreLogic report similarly lacks probative weight. Again, because Plaza called no witnesses, there is nothing to show why or how that report was prepared or from where it drew its reproduction-cost data. And despite the report being from more than two years after the relevant valuation date, Plaza did little to relate the reproduction costs to that valuation date. *See e.g. Long*, 821 N.E.2d at 471 (finding taxpayers' evidence lacked probative value where they did not explain how it related to the property's value as of the valuation date). At most, it elicited testimony from Metz that construction costs for residential properties had been increasing during the 12 to 18 months preceding our hearing but that he did not know if the same was true for commercial properties.

Final Determination

22. The assessment under appeal represents an increase of more than 5% over the prior year's assessment. Indiana Code § 6-1.1-15-17.2—which was in effect at the time we held our hearing, and which does not contain an exception for appeals initiated by an assessor—therefore applies. Because neither side met their burden of proof under that statute, the assessment must revert to the prior year's level of $1,514,800.

We issue this Final Determination on the date first written above.

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 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>.