

INDIANA BOARD OF TAX REVIEW

Small Claims Final Determination Findings and Conclusions

Petition No.: 45-004-17-1-4-00065-21
Petitioner: Surplus Management Systems LLC
Respondent: Lake County Assessor
Parcel: 45-08-08-234-007.000-004
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, Surplus Management Systems LLC (“Surplus”) appealed the 2017 assessment of its property located at 1689-91 West 9th Avenue in Gary.
2. On December 9, 2020, after holding a hearing, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 valuing the vacant land at \$4,700.
3. Surplus appealed to the Board on January 21, 2021, electing to proceed under the small claims procedures.
4. On January 23, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. No representative for Surplus called in to the hearing. The Board issued a Notice of Dismissal – Failure to Appear order on January 30, 2024.
5. On February 13, 2024, Surplus Management requested the Board set aside the Notice of Dismissal order. On February 26, 2024, the Board granted the request to set aside the order and scheduled a new hearing.¹
6. On June 18, 2024, the ALJ held a second telephonic hearing. Neither the Board nor the ALJ inspected the property.
7. Andy Young, Manager, appeared for Surplus. Matthew Ingram, Lake County Assessment Coordinator, appeared for the Assessor. Both testified under oath.

¹ The Petitioner argued that the assessed value of record should be \$2,900 as recommended by the Assessor at the January 23, 2024, hearing. Because we previously set aside the Notice of Dismissal at the Petitioner’s request, the value from the Form 115 represents the current assessment.

8. The parties did not offer any exhibits. 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; and (3) a digital recording of the hearing.

Findings of Fact

9. The subject property is a vacant lot with adverse topography located in Gary. *Young testimony; Ingram testimony.*

Contentions

10. Summary of the Petitioner's case:
- a) Surplus claimed that the Assessor reduced the 2023 assessment to \$2,400 because of the adverse topography. Because there had been no changes to the property, Surplus argued that value should also be applied to the 2017 assessment. *Young testimony.*
 - b) Surplus also argued that the subject property's assessment was not uniform because it was assessed using the front foot method while an adjacent property was assessed using a square foot method. *Young testimony.*
11. Summary of the Respondent's case:
- a) The Assessor conceded that based on the adverse topography an additional negative influence factor should be applied and the assessment should be reduced from \$4,700 to \$2,900. *Ingram testimony.*

Burden of Proof

12. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2² 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).
13. 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.

² Indiana Code § 6-1.1-15-17.2 was repealed by P.L. 174-2022 on March 21, 2022. In *Elkhart County 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.

§ 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).

14. Here, the Assessor conceded she had the burden of proof. But neither party established what the prior year’s assessment was. Without evidence of the prior year’s assessment, we cannot confirm that the Assessor had the burden of proof, nor can we order a reversion if the Assessor fails to meet her burden. As the party seeking to take advantage of the burden-shifting statute, it was Surplus’s responsibility to establish what the prior year’s assessment was. Because there is no evidence of the prior year’s assessment, we find the burden of proof remains with Surplus.

Analysis

15. Surplus failed to make a case for reducing the property’s 2017 assessment, but the Assessor conceded to a lower value.
 - a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.³ 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-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.
 - c) 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 County 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.*

³ 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).

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. See I.C. § 6-1.1-2-1.5.

- e) Surplus primarily argued that the 2023 assessment of \$2,400 should be applied to the year under appeal because there had been no changes to the property. But each assessment and each tax year generally stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Surplus needed to provide probative, market-based evidence supporting its requested value of \$2,400 as of the relevant valuation date. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Eckerling v. Wayne Co. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). But Surplus did not provide any market-based evidence supporting its requested value.

- f) In addition, Surplus Management argued it was not receiving a uniform and equal assessment as compared to a neighboring property. 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)).

- 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 v. Porter County Assessor*, 3

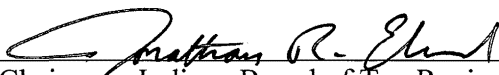
N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1 (a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *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. But Surplus did not provide any market data for either the subject property or the purportedly comparable property. Nor did it show that a single comparable property represented a statistically reliable sample. For these reasons, it failed to make a case showing a lack of uniformity and equality in the assessment.
- i) Surplus failed to meet its burden of proof. But the Assessor conceded the assessment should be reduced to \$2,900. For that reason, we order the assessment reduced to that amount.


Final Determination

- 16. In accordance with the above findings and conclusions, we order the assessment reduced to \$2,900.

ISSUED: Sept. 17, 2024


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>>