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

Petition No.:	**45-004-17-1-5-00069-21**
Petitioner:	**Surplus Management Systems LLC**
Respondent:	**Lake County Assessor**
Parcel:	**45-08-08-132-002.000-004**
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 2342 – 46 West 10th Avenue in Gary.

2. On December 11, 2020, after holding a hearing, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 valuing the vacant land at $2,800.

3. Surplus appealed to the Board on January 21, 2021, electing to proceed under the small claims procedures.

4. On June 18, 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 Surplus. Matthew Ingram, Lake County Assessment Coordinator, appeared for the Assessor. Both testified under oath.

6. 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

7. The subject property is a vacant lot located in Gary. *Young testimony; Ingram testimony.*

8. The 2016 assessment was $2,800, identical to the 2017 assessment. *Ingram testimony.*

Contentions

9. Summary of the Petitioner's case:

   a) Surplus argued the 2017 assessment should be reduced to $1,300 to be consistent with the 2020-2023 assessments because they were based on an objective change to the lot size. *Young testimony.*

   b) Surplus also argued that lots within the same neighborhood with similar characteristics are assessed inconsistently. *Young testimony.*

10. Summary of the Respondent's case:

   a) The Assessor argued that the assessment should not change because Surplus did not present any evidence that supported a reduction. *Ingram testimony.*

Burden of Proof

11. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2[1] 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. I.C. § 6-1.1-15-17.2 (b) and (d).

12. 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).

13. Here, the prior year's assessment was identical to the assessment under appeal. Thus, Surplus has the burden of proof.

Analysis

14. Surplus failed to make a case for reducing the property's 2017 assessment.

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[1] Indiana Code § 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.3 236 (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.

a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.[2] The petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby County Ass'r,* 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. 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 value from the 2020-2023 assessments of $1,300 should be applied to the year under appeal because those assessments were based on an objective change to the lot size of 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 $1,100 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*

[2] 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).

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, it appears Surplus Management may have been arguing that it was not receiving a uniform and equal assessment as compared to other properties in the neighborhood. Thus, we will address that claim. 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 properties. Nor did it show that the comparables properties 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) Thus, we find Surplus failed to make a case for any reduction in the assessment. Because Surplus has not supported its claim with probative evidence, the Assessor's

duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

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

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>