

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

Petition No.: 45-004-17-1-5-00067-21
Petitioner: Surplus Management Systems LLC
Respondent: Lake County Assessor
Parcel: 45-08-08-234-005.000-004
Assessment Years: 2017

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

Procedural History

1. Surplus Management Systems LLC (“Surplus Management”) appealed the 2017 assessment of its property located at 1697-99 West 9th Avenue in Gary.
2. On December 9, 2020, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 valuing the vacant land at \$3,900.
3. The Petitioner timely appealed to the Board, 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. Neither the Board nor the ALJ inspected the property.
5. Andy Young, Manager of Surplus Management, appeared for the Petitioner. Matthew Ingram, Lake County Assessment Specialist, appeared for the Assessor. Both testified under oath.

Record

6. The official record for this matter is made up of the following:
 - a) The parties did not submit any exhibits into the record.
 - b) The 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.
 - c) In addition, we note that the burden of proof in this case was discussed in the hearing for Petition No. 45-004-17-1-5-00068-21 that was held the same day. For that reason, we also incorporate the recording of that hearing.

Findings of Fact

7. The subject property is a 37 ft. by 130 ft. vacant lot located in Gary, Indiana. *Young testimony; Ingram testimony; Form 115.*

Contentions

8. Summary of the Petitioner's case:

- a) Surplus Management contends the subject parcel suffers from adverse topography. Young testified the property has a 20 foot below grade drop off from the road. He also claimed the lot is narrow and unbuildable. *Young testimony.*
- b) Surplus Management also argued that the subject property's 20% negative influence factor for being a vacant lot was insufficient. Instead, it argued the influence factor should be increased to 90% which would reduce the assessment to \$500. *Young testimony.*
- c) Young noted that the subject property's assessment ranged from \$200-\$500 from 2003 through 2011, while in 2012, it increased to \$2,100. After 2012, the assessment increased to \$3,400 and then again to \$3,900. He claimed this fluctuation occurred over numerous years with no changes to the property. *Young testimony.*

9. Summary of the Respondent's case:

- a) The Assessor conceded that based on a site inspection a negative 50% influence factor should be applied, and the assessed value should be reduced from \$3,900 to \$2,400. *Ingram testimony.*
- b) Ingram testified that in 2017, the subject property's lot size was corrected from 30 ft. by 156 ft. to 37 ft. by 130 ft., which contributed to the change in value. *Ingram testimony.*

Burden of Proof

10. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2¹ 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).

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.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.

11. 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).
12. Here, the evidence is conflicting as to the prior year's assessment of record. Young testified that a Form 134 processed in March of 2017 changed the 2016 assessment to \$2,100, while Ingram testified that the PTABOA determined the assessment for that year to be \$3,400. Neither party provided any documentation or other supporting evidence. As the party seeking to take advantage of the burden shifting statute, it was Young's responsibility to provide reliable evidence of the prior year's assessment. We find Ingram's testimony more credible than Young's and find the prior year's assessment is \$3,400.
13. Regardless of whether the subject property's 2016 assessment was \$2,100 or \$3,400, the 2017 assessment of \$3,900 is an increase of more than 5%. Accordingly, the burden shifting provisions of I.C. § 6-1.1-15-17.2 apply and the Assessor has the burden to prove the 2017 assessment is exactly and precisely correct.

Analysis

14. Neither party presented probative evidence of the market value-in-use of the subject property.
 - a) Generally, an assessment determined by an assessing official is presumed to be correct. 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.² Because the burden of proof has shifted in this case, the Assessor has the burden of proving the assessment is correct. I.C. § 6-1.1-15-17.2. In addition, Surplus Management may present its own evidence supporting a different value. *Id.*
 - b) 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 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

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).

evidence necessary to establish the market value-in-use of a specific property. *Piotrowski*, 177 N.E.3d at 133.

- c) 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.
- d) Here, the Assessor had the burden to prove that the 2017 assessment was correct. However, Ingram failed to present any probative market-based evidence in support of the assessment.
- e) We now turn to whether Surplus Management provided reliable evidence supporting its proffered value of \$500. It argued that the subject property’s land should receive a higher negative influence factor due to some of the subject property’s negative characteristics. This amounts to an attack on the methodology used to develop the assessment. Even if the Assessor made errors, simply attacking the methodology is insufficient. *Eckerling*, 841 N.E.2d at 674, 678. Although Surplus Management pointed to some deficiencies with the subject property, it did not offer any market-based evidence quantifying the effect those issues had on the property’s market value-in-use. To successfully make a case for lower an assessment, taxpayers must use market-based evidence to “demonstrate that their suggested value accurately reflects the property’s true market value-in-use.” *Id.* Surplus Management failed to provide probative evidence of the property’s market value-in-use as of the valuation date.
- f) Neither party presented reliable, market-based evidence sufficient to support any value for the subject property.
- g) Neither party met its burden of proof. But the Assessor conceded the subject property was worth no more than \$2,400, a lower amount than the prior year’s assessment. For that reason, we order the assessment reduced to that amount.

Final Determination

15. In accordance with the above findings and conclusions, we order the assessment reduced to \$2,400.

ISSUED: APRIL 22, 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>>