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

Petition No.: **45-004-17-1-5-00068-21**
Petitioner: **Surplus Management Systems LLC**
Respondent: **Lake County Assessor**
Parcel: **45-08-08-226-005.000-004**
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 1900 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 $2,500.

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.

Findings of Fact

7. The subject property is a 25 ft. by 114 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 is relatively flat with a 20% negative influence factor for being a vacant lot. Young testified the county changed the depth size of the lot, which appears to include land outside the subject property's fence line. Surplus Management argued the influence factor should be increased to 50% with a value no more than $1,500. *Young testimony.*

   b) Surplus Management also argued that lots within the same neighborhood with similar characteristics are assessed inconsistently by applying different influence factors. In addition, it argued that influence factors and assessments should not be based on who owns the property. *Young testimony.*

9. Summary of the Respondent's case:

   a) The Assessor argued that Surplus Management did not present any evidence to support a reduction in the assessment. The Assessor requested no change in the assessment. *Ingram testimony.*

   b) Ingram testified that Surplus Management owns the subject property and the adjacent property which both have 25 ft. of frontage. Because of this shared ownership, the properties are treated as if they have 50 ft. of frontage, and it is the Calumet Township Assessor's policy to apply only a negative 20% influence factor when the same entity owns 50 ft. of total frontage. *Ingram testimony.*

   c) Finally, Ingram testified the same land base rate is applied consistently in the subject property's neighborhood. *Ingram testimony.*

Burden of Proof

10. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2[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).

[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. Here, the parties agreed the assessment did not increase by more than 5% between 2016 and 2017 and there was no successful appeal in the prior year. Thus, Surplus Management bears the burden of proof.

Analysis

12. Surplus Management failed to make a prima facie case for reducing the property's 2017 assessment. The Board reached this decision for the following reasons:

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) 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 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) Surplus Management contends the 2017 assessment should be no more than $1,500, but it failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in marking 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

[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).

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).

e) Surplus Management also argued the subject property should receive a 50% negative influence factor. 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.

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. Surplus Management did not provide any of that data. For this reason, it failed to make a prima facie case showing lack of uniformity and equality in the assessment.

i) Finally, it appears that Surplus Management may have been arguing that a portion of the assessment was for the wrong property. But it failed to support this claim with reliable evidence. As discussed above, statements that are unsupported by probative evidence are conclusory and of no value to the Board in marking its determination. *Whitley* at 1118.

j) Thus, we find Surplus Management failed to make a case for any reduction in the assessment. Because the Petitioner has not supported its claim with probative evidence, the Respondent'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

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

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>