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

Petition No.:	**45-004-17-1-5-00071-21**
Petitioner:	**Surplus Management Systems, LLC**
Respondent:	**Lake County Assessor**
Parcel No.:	**45-08-08-201-011.000-004**
Assessment Year:	**2017**

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. On May 20, 2018, Surplus Management Systems, LLC ("Surplus") appealed the 2017 assessment of its property located at 2186 West 9th Avenue in Gary. On December 9, 2020, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued a final determination valuing the property at $2,200 (land at $2,200 and improvements at $0).

2. On January 25, 2021, Surplus filed its Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 30, 2024, Natasha Marie Ivancevich, our designated administrative law judge ("ALJ"), held a telephonic hearing. Neither she nor the Board inspected the property.

3. Andy Young appeared for Surplus. Attorney Ayn Engle appeared on behalf of the Lake County Assessor. Andy Young and John Yannick were sworn and testified under oath.

4. Surplus offered one exhibit:

   Petitioner's Exhibit B: Sales Comparison Analysis

5. The Assessor did not offer any exhibits.

6. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

Objections

7. The Assessor objected to a portion of Andy Young's testimony regarding settlements of other parcels. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways." *Dep't of Local Gov't Fin. v Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). "It prohibits the use of settlement terms and settlement negotiations to prove liability or invalidity of a claim or its amounts." *Id.*

at 1227. Considering this, we sustain the objection and exclude the testimony from evidence.

8. The Assessor objected to Petitioner's Exhibit B, the Sales Comparison Analysis, on two grounds: (1) that one page of the exhibit was for unrelated cases that have settled, and (2) that the document was one of the Assessor's potential exhibits and the Assessor would not have been required to exchange it if the hearing had been held in-person rather than telephonically. As to the first objection, we note that the document itself does not indicate it was prepared as part of settlement negotiations, and we find it at least minimally relevant to this appeal. As to the second argument, the Assessor failed to cite to any authority, nor are we aware of any, that would merit the exclusion of the exhibit on these grounds. For these reasons, we overrule the objection and admit the exhibit.

9. During the cross-examination of Mr. Yannick, the Assessor objected to several of the questions from Surplus on the grounds that they were outside the scope of the direct examination. The ALJ directed Surplus to confine its questions to topics covered in the direct examination. Later, during its closing argument, Surplus claimed that this restriction violated its right to due process. Surplus cited to no authority for this claim, nor are we aware of any. We note that Surplus was free to call Mr. Yannick during its own case-in-chief, but did not do so. Thus, we find no merit to the claim that Surplus was denied due process.

Findings of Fact

10. The subject property is a vacant lot in Gary. *Young testimony.*

Contentions

11. Summary of the Petitioner's case:

    a) Surplus argued that all assessments in Calumet township from 2011 to 2022 are invalid because they were not completed in compliance with Indiana Code § 6-1.1-4-13.6.[1] *Young testimony.*

    b) In addition, Surplus argued that Calumet township had been on a downhill slide for many years. It also claimed that properties that are similar to the subject property are assessed differently. In particular, Surplus pointed out that the base rates for the neighborhood should be similar, but they are not. Finally, Surplus argued that the "proposed" assessment from Petitioner's Ex. B does not comport with the sales data. *Young testimony; Petitioner's Ex. B.*

[1] Although somewhat unclear, it appears Surplus is arguing that the County Assessor did not set the base rates for the township.

12. Summary of the Respondent's case:

    a) The Assessor argued that Surplus presented no market-based evidence that would support a reduction in the assessment. The Assessor requested no change in the assessment.

Burden of Proof

13. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. I.C. § 6-1.1-15-17.2[2] creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances: (1) where the assessment under appeal represents an increase of more than 5% over the prior year or (2) 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).

14. 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). Therefore, 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).

15. Here, neither party provided evidence of the prior year's assessment. Thus, the burden shifting provisions of I.C. § 6-1.1-15-17.2 do not apply and Surplus has the burden to prove the 2017 assessment is incorrect and what the correct assessment should be.

Analysis

16. Surplus failed to make a prima facie case for reducing the property's 2017 assessment.

    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).

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[2] 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.

[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).

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 rules of the Department of Local Government Finance ("DLGF"). 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) Here, Surplus had the burden of proof. It primarily argued that the assessment should be deemed invalid because the Assessor failed to comply with I.C. § 6-1.1-4-13.6. This statute requires the county assessor to "determine the values of all classes of commercial, industrial, and residential land (including farm homesites) in the county." I.C. § 6-1.1-4-13.6(a). But Surplus offered no reliable evidence to support its claim that this statute was violated. In addition, it failed to cite to any legal authority supporting its contention that an assessment should be considered "invalid" if the Assessor fails to comply with I.C. § 6-1.1-4-13.6. Finally, we note that Surplus's representative, Andy Young, has already litigated similar claims in *Young v. Dep't of Loc. Gov't Fin.*, 237 N.E.3d 1175 (Ind. Tax Ct. 2024). In that case, the Court found no merit to Young's claims of a violation of I.C. § 6-1.1-4-13.6. For these reasons, we find that Surplus has not demonstrated it is entitled to any relief on these grounds.

f) Surplus did make some argument that the current assessment was incorrect by pointing to other properties that were assessed differently. But a party offering sales

or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Conclusory statements that properties are "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* at 471. They must similarly explain how relevant differences affect values. *Id.* In this case, Surplus did not provide the type of analysis contemplated by *Long.* It provided only conclusory statements that the purportedly comparable properties were similar to the subject. And it did not offer any evidence showing how any differences affected the properties' overall market value-in-use.

g) In addition, we note that Surplus made some reference to how the original assessment was developed. But a taxpayer challenging an assessment generally cannot meet their burden simply by contesting the methodology used to compute the assessment. As discussed above, parties must offer market-based evidence that complies with generally accepted appraisal principles to show the property's market value-in-use. *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Here, Surplus offered no evidence that supported any specific value for the subject property.

h) Finally, it appears Surplus may have been arguing that it was not receiving a uniform and equal assessment. 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). However, such studies 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)).

i) When a ratio study shows that a given property's assessment is 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 Cty. Ass'r.*, 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)).

j) 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 sales prices or appraisals. Surplus 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.

k) 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

17. In accordance with the above findings of fact and conclusions of law, the Board orders no change to the 2017 assessment.

ISSUED: Oct. 28, 2024

Jonathan R. Elwood
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Ellenberger
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>.