

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

**Petition:** 45-003-17-1-5-00009-21  
**Petitioner:** Andy Young  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-19-126-014.000-003  
**Assessment Year:** 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Young contested the 2017 assessment of his property located at 4240 W. 30<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the residential property at \$6,100 (land at \$3,500 and improvements at \$2,600).
2. Young filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 27, 2021, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Young’s petition. Neither she nor the Board inspected the property.
3. Young appeared pro se. The Assessor appeared by Hearing Officers Robert Metz and Jessica Rios. All were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1C: Property Record Card
  - Petitioner Exhibit 2C: Parcel valuation history
  - Petitioner Exhibit 3C: Photograph from the county website
  - Petitioner Exhibit 4: Settlement Agreement
  - Petitioner Exhibit 5: List of properties listed for sale in Gary
  - Petitioner Exhibit 6: Notice to Bidders: Request for Proposals
  - Petitioner Exhibit 7: Appraisal of Steven Kovachevich for 2517-2521 Washington Street
  - Petitioner Exhibit 8: Appraisal of Steven Kovachevich for 739-29 W. 35<sup>th</sup> Avenue

Petitioner Exhibit 9:	Appraisal of Steven Kovachevich for 1109 Oklahoma Street
Petitioner Exhibit 10:	Land Comparison Chart from Kovachevich appraisals
Petitioner Exhibit 11:	Appraisal of Jerry J. Kulik for 9410-14 E. 1 <sup>st</sup> Avenue
Petitioner Exhibit 12:	Appraisal of Jerry J. Kulik for 9400-08 E. 1 <sup>st</sup> Avenue
Petitioner Exhibit 13:	Chapter 2, page 9, Real Property Assessment Guidelines
Petitioner Exhibit 14:	Response to Andy Young's letter to Mr. Dull
Petitioner Exhibit 15:	Andy Young's letter to Mr. Dull
Petitioner Exhibits 18-23:	Photographs of the subject property and surrounding area <sup>1</sup>

- b. The record for the 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.

#### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 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).
6. Here, the property's assessment decreased from \$6,200 in 2016 to \$6,100 in 2017. Young therefore bears the burden of proof.

#### **OBJECTIONS**

7. The Assessor objected to Exhibits 5-12 for relevancy. The Assessor also objected to Exhibits 7-9 on the additional ground that they are not complete documents. Finally, he objected to Exhibit 11 because it is marked as confidential and Young is not named as an intended user in the appraisal. Young countered that he was using the information to build a case that the base values throughout the township are wrong. Our ALJ took the objections under advisement.

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<sup>1</sup> Young provided a single set of Exhibits 4-15 during the hearing held for Petition No. 45-003-17-1-5-00007-21. He requested that they be made part of the record in this appeal as well. Our ALJ admitted the exhibits, subject to the objections the Assessor raised during the hearing on Petition No. 45-003-17-1-5-00007-21. In future hearings, the parties must prepare and submit a copy of all evidence they wish to be considered into the record at each hearing.

8. Because the exhibits provide information about other Lake County properties, we find them to be at least minimally relevant to the issue at hand. To the extent the Assessor was concerned that introducing incomplete copies of Exhibits 7-9 would be misleading, she was free to offer the rest of the documents to avoid that problem. *See* Ind. Evid. R. 106 (allowing an objecting party to require the introduction of the parts of the document it wants considered alongside the objectionable material). And we do not find the fact that Exhibit 11 is marked confidential to be sufficient grounds to exclude it. We therefore overrule the Assessor's objections.

#### SUMMARY OF CONTENTIONS

9. Young's case:
  - a. The subject's property record card ("PRC") has a note from 2009 indicating that the improvements were in unsound condition. But there have not been any improvements on the property since before Young purchased it in 2003. If a structure existed, Young would have seen it when he purchased the property. So, the picture from the county website must have been taken before 2003. The improvements should be removed from the assessment because they are no longer there. *Young testimony; Pet'r Exs. 1C-3C, 18-21.*
  - b. The subject's valuation history shows the land was assessed at \$400 from 2002 through 2015. In 2016, the land assessment jumped to \$3,500 and has stayed there ever since. The improvements were assessed at \$400 from 2002 to 2005. In 2006, the improvement assessment increased to \$2,200. Since then, the assessment has fluctuated between \$2,000 and \$3,100 even though there were no improvements there. *Young testimony; Pet'r Exs. 1C, 2C.*
  - c. The document containing the subject's valuation history incorrectly describes its neighborhood as neither declining nor blighted. But the neighborhood is a textbook example of a blighted neighborhood, and the area is in absolute decline. Many of the streets in the area have been blocked off by the city or are impassable because nature is taking over. The subject's neighborhood at least has a low base rate. But Young questions why its base rate is lower than the rate for the neighborhood across the street. Both neighborhoods are abandoned, overgrown, and lack basic city services. Calumet Township applies a -20% influence factor across the board for vacant lots in other parts of the city that are not as abandoned and still have some city services. Because the subject property is a vacant lot, it should receive the same -20% influence factor. *Young testimony; Pet'r Exs. 1C, 2C, 18-23.*
  - d. As part of a 2012 settlement agreement reached in a Chapter 11 bankruptcy case, Young and several other entities he owns came to an agreement with Lake County for a proper assessment of the subject property and other properties he owned. The subject's agreed value was \$2,100. The county failed to put the agreed values into the system. As a result, it is as if the settlement agreement never happened. Had the

county not renege on the agreement, it is unlikely they would be here today. *Young testimony; Pet'r Ex. 4.*

10. The Assessor's case:
  - a. Because Young has not provided any evidence supporting his requested value, the Assessor recommends no change in the assessment. *Metz testimony.*

#### ANALYSIS

11. Young made a prima facie case for reducing the property's 2017 assessment. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2021 REAL PROPERTY ASSESSMENT MANUAL at 2, 3. "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). It is instead 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.
  - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with the Uniform Standards of Professional Appraisal Practice often will be probative. *Id. See also Koostard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.2005). Cost or sales information for the property under appeal may also be used, as well as sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id. See also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). Regardless of the type of valuation evidence used, a party must also relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for this appeal is January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
  - c. To the extent Young was claiming that the subject property should be assessed at \$2,100 in accordance with the 2012 settlement agreement he entered into with the county, we disagree. We have repeatedly rejected attempts to use evidence of settlement negotiations to prove value. Our Supreme Court has held that "[t]he law encourages parties to engage in settlement negotiations in several ways. It prohibits the use of settlement terms or even settlement negotiations to prove liability for or

invalidity of a claim or its amount.” *Dep’t of Local Gov’t Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005). We therefore conclude that the settlement agreement has no probative value.

- d. We also give no weight to his claims regarding the property’s fluctuating assessment. The changes to the property’s assessment over the years does not prove that the 2017 assessment was incorrect. As the Tax Court has explained, “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty Ass’r*, 74 N.E.3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. See *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001).
- e. Young’s arguments about the neighborhood’s condition and the application of a -20% influence factor fair no better because they focus on the methodology used by the Assessor during the mass appraisal process. Even if the Assessor made errors, simply attacking her methodology is insufficient. 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 at 674, 678 (Ind. Tax Ct. 2006).
- f. Nevertheless, Young’s un rebutted testimony established that the subject property was unimproved as of January 1, 2017. Thus, the assessed value for the non-existent improvements must be removed. We therefore conclude that Young made a prima facie case for reducing the assessment to \$3,500.

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for Young and order the Assessor to remove the non-existent improvements from the PRC and change the 2017 assessment to \$3,500.

ISSUED: 12/27/2021

  
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Chairman, Indiana Board of Tax Review

  
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Commissioner, Indiana Board of Tax Review

  
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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>>.