

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

Petition No.: 45-003-18-1-5-00746-20
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel No.: 45-07-13-481-017.000-003
Assessment Year: 2018

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

PROCEDURAL HISTORY

1. On August 1, 2019, James Nowacki (“Nowacki”) appealed the 2018 assessment of his property located at 4703 West 28th Avenue in Gary. On October 21, 2020, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a final determination valuing the property at \$1,200 (land at \$1,200 and improvements at \$0).
2. On December 2, 2020, Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On November 12, 2024, Natasha Marie Ivancevich, our designated administrative law judge (“ALJ”), held an in-person hearing. Neither she nor the Board inspected the property.
3. Nowacki appeared *pro se* and testified under oath. Matthew Ingram, an employee from the Assessor’s office, appeared on behalf of the Lake County Assessor and testified under oath.

RECORD

4. Neither party submitted any exhibits. The official record also includes: (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.

FINDINGS OF FACT

5. Sometime prior to this hearing Nowacki sold the property in a multi-parcel sale. *Nowacki testimony. Ingram testimony.*

PARTIES' CONTENTIONS

A. Nowacki's Contentions

6. Nowacki testified that he had spoken with an adjacent property owner with an identical property that was assessed at \$500. He argued that that the subject property's assessment should be reduced to that amount. He contended the current assessment is unfair because there should be a level of equity between property owners, and he was not afforded the same rate despite having a similar property. *Nowacki testimony.*

B. Assessor's Contentions

7. The Assessor contended Nowacki sold the parcel in a multi-parcel sale for approximately \$436,880 and the per parcel sale price equals approximately \$11,500. The Assessor requested no change in the assessment. *Ingram testimony.*

BURDEN OF PROOF

8. Generally, the taxpayer seeking review of an assessing official's determination has the burden of proof. I.C. § 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).
9. 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).
10. Here, there is no record of the prior year's assessed value and neither party offered any argument about the burden of proof. Thus, Nowacki has the burden of proof.

ANALYSIS

11. Nowacki failed to make a case for reducing the assessment.

¹ I.C. § 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.

- 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 Assessor*, 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.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
- c) 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.
- 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 2018 assessment, the valuation date was January 1, 2018. See I.C. § 6-1.1-2-1.5.
- e) Here, Nowacki had the burden of proof. To meet his burden, Nowacki argued that the subject property’s assessment should be reduced to match an adjacent “identical” property assessed at \$500. But 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. *Long v. Waybe Twp. Ass’n*, 824 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Similarly, they must explain how relevant differences affect values. *Id.* Opinions

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 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 Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998). Nowacki did not offer the type of analysis contemplated by *Long*. He did not identify any similarities or differences between the comparable land and the subject, nor did he offer any evidence or analysis that showed how any differences affected the properties overall market values-in-use. Without such an analysis, this evidence is insufficient to support a reduction in value.

- f) In addition, Nowacki argued that the subject property's assessment was inequitable as compared to an adjacent property. We take this as a challenge to the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution. 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 statistically reliable comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. But Nowacki did not demonstrate that he provided a statistically reliable sample of properties, nor did he provide objectively verifiable market-based evidence for the value of the subject property or the purportedly comparable property. For these reasons, he has failed to show he is entitled to any relief.

FINAL DETERMINATION

12. Nowacki had the burden of proof but failed to present any probative evidence supporting any change in the assessment. The Assessor did not request a change in the assessment or present any reliable evidence of value. For these reasons, we order no change to the 2018 assessment.

ISSUED: Feb 10, 2025

Jonathan A. Elrod
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy J. Elrod
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>>.