

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

Petitions: 45-003-13-1-5-01210-16
45-003-14-1-5-01222-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel 45-07-13-480-002.000-003
Assessment Years: 2013 & 2014

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

PROCEDURAL HISTORY

1. Mr. Nowacki contested the 2013 and 2014 assessments of his property located at 4845 West 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the vacant residential property at \$2,200 for 2013 and \$1,400 for 2014.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On December 14, 2020, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”) held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by hearing officer Joseph E. James. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit A: Property Record Card (2010-2014)
Petitioner Exhibit B: Property Record Card (2015-2019)
 - b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. a. 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, or where it is above the level determined in a taxpayer's successful appeal of the prior year. Ind. Code § 6-1.1-15-17.2 (b) and (d).
- b. Here, the value of the property remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The Assessor, however, conceded that the 2013 assessment should be \$1,400. To the extent that Nowacki requests a lower value, the burden of proof is on him. Because there is no increase from 2013 to 2014, Nowacki bears the burden of proof for 2014.

SUMMARY OF CONTENTIONS

6. Nowacki's case:
 - a. Nowacki contends that the property record card is inaccurate. The date noted on it for his purchase is even incorrect, as is the price he paid for the property. It also shows that there are paved roads and utilities where none exist. The only accurate characteristic on the property record card is the low topography. *Nowacki testimony; Pet'r Exs. B & C.*
 - b. The subdivision across the road has some improvements but the base rate is half that of his subdivision. There are identifiable roads and utilities making the properties across the road more valuable than his. There is a lack of uniformity and base rates between these two subdivisions. Nowacki contended that this violates the standards and requirements set by Indiana law. *Nowacki testimony.*
 - c. Indiana law also requires that assessors use market rate to assess properties. Fair market value is established when there is a willing buyer under no pressure to buy a property and a willing seller under no pressure to sell. An auction is a good example of the market setting rates. The county doesn't have to sell the property and the buyer purchases at will. Nowacki contends that instead of market-based assessments, the assessor uses arbitrary and capricious reliance on secretive, obscure neighborhood rates that are not only erroneous but are unavailable for citizens to access. *Nowacki testimony.*
 - d. While taxpayers are expected to bring evidence to their hearings, the data needed, including the neighborhood maps and the base rates, are unavailable. Nowacki finally received the neighborhood map only to find out it is outdated and inaccurate. He had to file a public records request to get the rates. He contends that this is in

violation of Indiana law, which says this information is supposed to be available.
Nowacki testimony.

7. The Assessor's case:

- a. The Assessor's recommendation is an assessed value of \$1,400 for both 2013 and 2014. *James testimony.*

ANALYSIS

8. Nowacki failed to make a prima facie case for reducing the property's 2013 and 2014 assessed values. We accept the Assessor's concession that the 2013 assessment should be \$1,400. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code. § 6-1.1-31-5(a); Ind. Code § 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 Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). Taxpayers may use cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices). The party must offer relevant market-based evidence. March 1 is the legal assessment date for 2013 and 2014. Ind. Code § 6-1.1-2-1.5(a).
- c. While Nowacki contends the assessed value should be \$500 for 2013, he 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 making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Nowacki also claims the subject property's base rate is double the rate of an adjacent subdivision. We interpret this argument as a challenge to the uniformity and equality

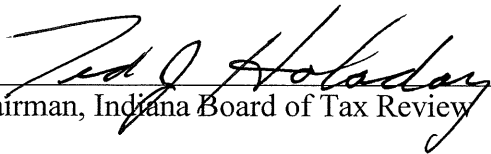
of his assessment. The Tax Court has previously held that when taxpayers challenge the uniformity and equality of their assessment, one approach they may adopt involves the presentation of assessment ratio studies which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals. *Westfield Golf Practice Ctr, LLC v. Wash. Twp. Ass'r*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007).

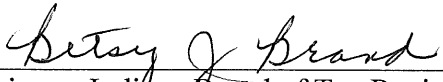
- e. Such studies must be prepared according to professionally acceptable standards and be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs*, 643 N.E.2d 810, 813 (Ind. Tax Ct. 2001). When a ratio study shows that a given property is assessed above the common level of assessment, that 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 the 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).
- f. While Nowacki contends his assessment is too high compared to properties in an adjacent subdivision, he presented no evidence showing the base rate in the purportedly comparable subdivision nor did he present any evidence showing the adjacent subdivision was comparable to the subject property. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 at 470 (Ind. Tax Ct. 2005).
- g. While Nowacki contends the characteristics on the property record card are not accurate, he did not show how any changes to it would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d at 678 (Ind. Tax Ct. 2006).
- h. Nowacki failed to make a prima facie case for changing the 2013 assessment but the Assessor recommended that the 2013 value should be changed to \$1,400. The Board accepts the Assessor's concession.
- i. The burden of proof was on Nowacki for 2014. He offered the same evidence and arguments for 2014 and similarly failed to prove the assessment was incorrect for that year.

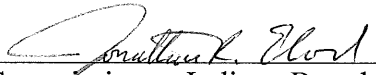
FINAL DETERMINATION

We accept the Assessor's recommendation that the 2013 assessment be changed to \$1,400 and order no change to the 2014 assessment.

ISSUED: 3-12-21


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>.